Docket No: _____

United States Supreme Court

Glenn Henderson
Plaintiff

v.

Sony Pictures Entertainment, et al.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth District

Petition for Writ of Certiorari

Glenn Henderson, Plaintiff pro se
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910-867-4931

Questions

1. When can a settlement be challenged?
2. Do state laws affect the challenge of a settlement in federal court?
3. Did I have to dismiss the federal case because a settlement was signed in state court?
4. Is fraud cause to be able to challenge a settlement?
5. Is improper and undue influence from a third party because of actions by a defendant reason to challenge a settlement?
6. Is emotional harm cause by a defendant reason to challenge a settlement that the defendant obtained because of the emotional harm?
7. Is inadequate compensation compared to the damage done a reason to be able to challenge a settlement?
8. Is there due process if points are not addressed or questions not answered?
9. Is it public interest to let the settlement and the way it was obtained stand?
10. Does the first contract, a collective bargaining agreement, that I never broke and never agreed to void, have precedence over and overrule the second contract, the settlement?
11. Do discrimination laws apply to banks in their actions toward others?
12. Does diversity of citizenship give federal courts jurisdiction between litigants from two different states?

13. Should a jury or judge decide if fraud or other contract violations occurred?
14. Do state and/or federal laws allow individuals to be sued under discrimination-related laws?
15. Should this court intervene to make sure employees are allowed to go on jury duty and not be discriminated against in many other illegal ways and instances?

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Table of Cited Authorities

List of all Defendant Parties

Sony Pictures Entertainment, Inc., Paul, Hastings, Janofsky & Walker, LLP, Mellon Bank, Kim Russo, Amy Dow, Holly Lake, James Zapp, Beth Berke, Mike Burkenbine, Yasuko Furuya, Linda Bershad, Adeline Masson, Steve Burlie, Michele Stein, Stephen Carroll, John Calley, Julie Biehl, Mary Burke, Mark Lebowitz, Bedi Singh, Sherie Smith, Norma Castillo, Elanor De Silva, Karen Otto, Connie at Mellon Bank.

Citations

The District Court found no legal authority about settlements and being depressed, said I appeared to reassert claims, and construed my claim of discrimination by a bank as pursuant to Title VII.

Basis for Jurisdiction

Date appeal affirmed: August 1, 2008
Date of order related to rehearing: January 16, 2009
This Court has jurisdiction because the case was reviewed by the Federal Ninth Circuit Court of Appeals.
Statutory Provision: Petition for Writ of Certiorari may be filed after review by a federal court of appeals.

Constitutional Provisions and Statutes

The Constitution grants equal protection under the Fourteenth Amendment.
The Constitution grants due process under the Fifth and Fourteenth Amendments.

California Civil Code Sections 1689, 1667, 1668, 1670.5, 1565-1589, 1549-1550, 1565-1589, 1688-9, 43, 3525,
Civil Rights Act of 1964.

Statement of the Case and Points

California laws support my case. They affected the dismissal of this federal case because the settlement made in state court, according to Sony's lawyers, required me to ask for dismissal. State law states fraud, undue influence, mental state and getting an advantage because of someone's mental condition, and inadequate compensation can void a contract.

I did not get all my points addressed or all my questions answered.

It is not public interest to allow the settlement to stand or let an employee be harassed, defamed, discriminated against, or fired for serving on jury duty.

The first contract, the Collective Bargaining Agreement (CBA), should still be in effect. It was never legally dissolved. California Civil Code Section 3525 states rights otherwise equal, the first is preferred.

Some issues about Sony's lawyers' belonged in federal court because there was discrimination, Federal Section 1983 issues because the courts were involved, and because of Kimes v. Stone (1976 9th Cir.) about overruling state immunity for court papers. Also, now I live in a different state.

Sony's attorneys and Sony's claims I was a poor performer, did anything wrong or in bad

faith in attempting litigation, or my papers did not make sense is reason to punish them. The lawyers should be disbarred. Sony needs to be restructured into a law abiding company. The district court judge made mistakes but seemed to be acting in good faith. Sony's lawyers must have tricked him. I do not understand why the three member appeals court and the appeals court en banc upheld the mistakes. They upheld dismissal of supposed claims against a person, who was not even a defendant. They upheld that I was trying to re-litigate claims, when I clearly showed the dates and events were different. He said I "appeared to reassert claims." Maybe, because I used similar words like harassment and defamation, the judge was tricked. The appeals court mistakenly upheld that I was claiming a Title VII claim against Mellon. They upheld the district court did not have jurisdiction for claims I made against Mellon, though we were from different states. I addressed these issues but did not get justice. That is incredible.

Maybe four years after I was terminated, Sony put my former supervisor, Kim Russo, on probation, wrote her up, and told her if she did not change, should would be terminated. Sony has now acknowledged and documented what I and others have said all along and what Sony knew all along: Russo was a problem. They knew she was a liar and harasser. They have now documented they have reason to doubt her integrity and

competence. They had many complaints about her from people besides me.

I am rescinding the contract and have been trying to as allowed in CA Section 1689. There was duress, menace, fraud, and undue influence exercised by or with the connivance of the party to whom I rescind. Sony connived to breach the CBA and to get others to believe I was a poor performer. I mistakenly thought I should sign the settlement.

The Mellon issue is the one and only issue I am not sure was okay that I did. I think I could. I want to find out for sure. Sony stated if I wrote a letter or did something else equally bad, I could be terminated. I did not. We had a contract there. Sony did not say Mellon should not have been contacted but said I should not have been the one and did not follow procedures. There was no procedure. The supervisor above my immediate supervisor said I should have said something but should have told Sony's Treasury Department. She said they were the liaison and that I showed I knew because I cc'd them when I emailed Mellon about business. It never occurred to me to speak to treasury. I thought about going to Human Resources. They had refused to help me with problems with my supervisor. I thought Sony might say I should have gone to my supervisor. She was harassing me, defaming me, lying, and her supervisor was enabling her and also harassing and defaming. I felt I had no place to go at Sony. It is incredible that the supervisor said I knew that treasury was

the liaison. She evidently meant they were the one and only liaison and I knew it. I was emailing Mellon occasionally about regular business. That clearly showed I was a liaison. I was not the only one. I also cc'd my supervisor on emails to Mellon, but no one said she was a liaison. Also, my supervisor said I must discuss things with people if I did not like what they did or I could be fired. I attempted that with Mellon. Another Sony employee said she contacted a Sony customer's CEO about unpaid invoices. That was fine with Sony.

Title II of the Civil Rights Act of 1964 states it is unlawful for public businesses to discriminate against some people. Mellon Bank and I were from different states, so federal court had jurisdiction. Mellon did not supervise, train, or hire employees properly. The Mellon bank account I used received maybe 2-3 checks daily on average. Sony had at least one other account with Mellon; I am not sure about activity there. Sony's having an account with few checks was maybe doing Mellon a favor. Mellon must have had some control or influence over Sony. A company must have that to be considered an indirect employer. Also, Mellon must have had that since they caused Sony to punish me. At first, I thought maybe Mellon was trying to resolve the issue. Then I found, according to Sony, someone at Mellon said I said I did not know what I might do. I did not. Such a statement sounds like a threat. Sony also said the Mellon person said I meandered. I did not. That claim

sounds like trying to make me look nonsensible. I was later bothered someone's comments She called on Mellon's behalf to ask me about Mellon's service. Mellon wanted my opinion. That was maybe 1-2 months, before I wrote the letter.

Mellon sounds like someone trying to interfere with my employment and trying to get me punished and harmed. They succeeded. Blender v. Superior Court concerns suing a company for defaming an employee at another company. Mellon caused harm to my relationships and insulted me. CA Civil Code Section 43 says those are actionable. Courts have ruled a person can tell another person not to talk to them. A person can or should be able to tell a person how to talk to someone, i.e. without harassment, insult, or defamation. I wanted to do that. Mellon or their lawyer defamed me in court papers. I want to clear my name.

Sony said my complaint did not go through proper channels. Sony refused to address problems within Sony, so I did not think they would help me with Mellon. I was under all kinds of stress at the time. I was starting to be harassed anew after I had complained about not getting promoted and was responding to Russo's false allegations.

If Sony wanted a good relationship with Mellon, I doubt this case helps. I was told an executive at Mellon was on the board at Sony and used to work there. That would give him power over Sony, which Title VII requires for

a non-employer. Title VII may have applied; I was not claiming so.

The contract was unlawful for causes which did not appear in the terms or conditions. That is in CA Section 1689. The contract did not state Sony had breached the CBA, had lied, defamed me, harassed me, and discriminated against me to get to the settlement offer.

Sony made changes in the settlement I signed compared with one they had offered before, which was the one I thought I was going to sign. I did not get time to think about the changes. A change was that Sony would pay for help for me from an outplacement company, but I had to do it within 6 months. The first settlement offer did not have that limit. I had found a new job 2½ months earlier and did not want to leave so quickly. I felt very lucky to find a job. If I had found a job I liked through outplacement, then I might have been okay with the settlement. Any job without harassment would have probably been better. I did not get 7 or 21 days to think about the new settlement I signed. I might have or probably would have changed my mind if given 7 or 21 days to consider it. That would have been consistent with my previous behavior. I signed two previous settlements and changed my mind after having 7 days to consider them. Someone without an attorney is supposed to get 21 days.

In Kimes, attorneys and litigants do not have state immunity for statements in court papers if Federal Section 1983 is involved.

Sony and their lawyers tried to stop me from getting a fair trial, due process, equal protection, and the right to petition.

The first of two write ups at Sony showed I had done everything right. It showed I had a 100% rate of accuracy, no problem about getting behind, and worked well with others. The second write up discussed the letter to Mellon, showed I made 1 mistake in cash application and showed I guessed wrong when I temporarily put an amount I thought was an overpayment to the next open invoice. I spoke to the collector. She checked. It turned out an invoice was wrong in our accounting system. There were 12 items in the first write-up, a Development Plan. I did three before I was taken off the plan by the supervisor above my immediate supervisor. I let my supervisor know when a check copy was missing from a bank or if I did not finish applying all checks I got that day. A missing check copy was rare. She had never asked me to do anything in the plan until she gave me the plan. According to our department head and a VP of Human Resources, she said she had. If so, she was lying. She did not make the claim in the plan. If it were true, why not? Since she decided to lie, why not claim that, if she thought of it? I was fine with informing her about missing check copies and how far along I was in applying cash. It was probably not necessary. She claimed she might have to make an action plan. She never did or had to. She later changed her story and said she wanted to know what was going on and couldn't afford to

look bad about not knowing. She was okay with lying. I had only a half day of checks not entered by the end of any day, and that included after holidays. I contacted the bank about needed copies; they got them to me within a day. My previous supervisor or a co-worker had told me the procedure. At the time of the first write-up, a check copy was missing maybe once every couple of or few months. The second item I did was I once used a generic fax from a software program I used occasionally. I faxed companies to ask if we could move overpayments to unpaid invoices. The generic fax listed all unapplied amounts and open invoices, so I had to edit. I had been using a fax sheet with the company logo; I thought it looked more professional and was easier to read. I typed in about one or two lines to ask about transferring an amount. It took me longer to use the generic fax. The third item I did was I printed a report from the software program I used occasionally. I set it on my desk and did not use it. I also printed a report from the main software program I used. It had more information. I used it. So, I was told I had improved from unacceptable to acceptable performance after I started letting my supervisor know about the rare instances of a missing check copy that I always took care of and got within a day or when I had not entered all checks, used a generic fax sheet once, and started printing a report that I did not need or use. Paper, toner, and time were wasted. Different amounts of checks came in

each day, so daily workloads for that were different.

I wrote "duress" to describe my condition at the time I signed the settlement. I wish I had said stress. The district court said duress meant a threat. I should have said my emotional state prevented me from making sound decisions. Sony caused my emotional state. I was very stressed and overwhelmed by things. Stress diminishes judgment. Sony made threats or implicit threats. They lied and showed they probably would at any trial. I was pressured by others to take the settlement. Like Sony, none looked at all the evidence or talked with my witnesses. A mediator at the EEOC-sponsored mediation badgered me and said the deal was great. I was pressured by him, the EEOC and others, directly or indirectly, to take the settlement. Sony committed fraud by lying to my union, the EEOC, the mediator, the California Labor Relations Board, and the courts. They tricked people into believing I was a poor performer, even though they had zero documented proof or evidence. The Labor Relations Board was looking into the jury duty issue. They said if other issues were a factor in my termination, then the jury duty issue might not matter. There was a threat of harm. The EEOC told me I would have to pay $25,000.00 just to go to court and that Sony could probably get the court to say I must pay Sony. I did not know how much that might be. I was sure it would be thousands and take all my money. Sony tried to get attorney fees. That was fraud

because they did not deserve them, win or lose. The only way they would have won was to lie or not tell the whole truth. I knew I would have to pay court costs like jury fees and stenographer fees if I lost. I heard that was typically $5,000.00-7,000.00. I was afraid of losing my money and property and dying on the streets. Sony had tricked a workers' compensation doctor into thinking I was a poor performer. I was sure they would use that doctor as well as the others I mentioned as witnesses. Doctors are supposed to be highly intelligent and believable. All that was too much stress and psychological damage. Sony conspired with others. They were in contract negotiations with my union after my termination. They got the union to not help me. Sony gave the union jury pay for members. The last issue at Sony was they claimed I spent too long on jury duty. They claimed I had to get their permission because I used vacation time. That looked like conspiracy and a bribe to get the union to not help me. The EEOC said they had spoken with my union, and the union indicated they did not think I had a case or did not plan to help me. So, I thought that Sony, by fraudulent means and criminal behavior, had the EEOC, a physician/psychiatrist, some Sony employees, and my union ready to testify against me.

Sony illegally broke a contract, the CBA, which I had not violated. They fraudulently put me in the position of having to take the settlement offer or try to act as my own

attorney or do nothing and face the consequences of having been fired. If I could get a job interview, I would probably be asked to explain why I was fired. Sony lied to my union representative, who, with no documentation, claimed Sony was right. They would not help me. I tried and could not get a lawyer. The LA Bar only had one attorney listed who could help someone in a union. The district court's pro se packet stated I could ask for help in obtaining a lawyer; I asked.

I read Section 2000e and cannot tell that I must file with the EEOC and get a right to sue letter before filing a court case. I do not see how a person can be expected to know that. Until the court said I needed a letter, I thought going to the EEOC was an option. Filing a case should stop the statute of limitations for filing with the EEOC. One could then go to the EEOC.

Sony requested sanctions on me in district court. The judge denied that, even though Sony tricked him into believing I was trying to re-litigate some claims. The judge dismissed claims against a person, who was not a defendant. I did not write about state contract law in my complaint, but I talked about it in oral argument. The court dismissed claims with prejudice that happened before the settlement, claims erroneously thought to be duplicative, Title VII claims against individuals, and federal claims against Mellon. Law shows the settlement could be challenged. I believe law prohibits discrimination by banks in ways besides in

employment or lending. Sony's policies state that harassment by a company doing work for Sony is illegal. Mellon did work for Sony. I have read it has been suggested or was required that a person should tell a harasser to stop before making a legal complaint. My letter was an attempt to do that. I was under lots of stress at Sony when I wrote the letter. I wanted to speak up for myself.

Sony and their attorneys conspired to lie, defame me, harass me, and take away my constitutional and other legal rights. They do not have immunity for court papers because of Kimes. Conspiracy can be shown in places besides court papers. Sony and their attorneys had plenty of evidence and witnesses to show I was not a poor performer. Sony's lawyer sent me information that proved I was not a poor performer and proved my supervisor lied and harassed me; others at Sony lied and harassed me. They acted illegally, criminally, and in bad faith. My supervisor and Sony claimed jury duty was a problem until attorney Amy Dow stated it was not in a document to the Labor Relations Board. The documented story change sounds like conspiracy somewhere.

The appeals court stated that their disposition of my case was not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3. Were they unsure about something? They upheld dismissal of non-duplicative claims supposedly involving a person not a defendant. Does anybody see why I do not think I am getting due process or a fair and full attempt at litigation? They made

the point I had not raised the issue of Mellon being a possible indirect employer until appeal. I had not been saying that. The district court thought maybe I was, so I addressed the idea.

Should a jury decide if fraud, undue influence, unfair advantage of emotional or mental state and other violations occurred? Judges are supposed to decide procedural issues. Juries are supposed to decide Civil Code and fact issues. There were many triable issues about fact.

In August 2000, after I came back from a vacation, my supervisor, Russo, stated I was a "miracle worker," had "magic fingers," she was never so glad to see someone back from vacation as me, said my fill-in, who had trained me, said she did not know how I did it. There were witnesses. My fill-in left me a note saying she could not fill my shoes. Another employee said what I did was like pulling "a rabbit from a hat." Russo wrote that I made few mistakes, handled a large workload, worked well with others, and volunteered for new assignments. Yet, somehow, I was fired for "poor performance over the long term." It is the court's decision if and how long I have to serve on jury duty. She must have had personal reasons to want rid of me. I had an MBA. She said she could not afford to look bad. Maybe, she thought my good work and degree might do that. She referred me to a person and position in a different department at Sony. Why, if she thought I was a poor performer?

After my termination, at an EEOC-sponsored mediation in February 2002, I said no to a settlement offer after agreeing at first. I had a week to consider it. I had signed out of fear. I had no help from my union or an attorney. I knew the settlement was not remotely fair. I later agreed to sign it if the offer were still open. I went to sign in August 2002. Sony made changes to the old one, which was what I was agreeing to sign. The old one I agreed to sign was not offered. That was fraud. I should have been given 21 days to think over the new settlement.

I had to act as my own attorney or forget court. I had anxiety disorder, severe depression, and post traumatic stress disorder (PTSD) when I signed the settlement. I had panic attacks and trouble sleeping. I could hardly function. Sony lied over and over and committed perjury, so there was the implied threat to do it again. No one should have to sign or decline a settlement under those circumstances. I would not have signed the settlement if Sony had not lied.

Russo tried to take advantage of my being the quiet type. Sony let her. My being the quiet type came from PTSD, anxiety disorder, and depression. They have continually tried to take advantage of my mental weakness and distress. It is humiliating to have to say I had that. I was not capable of signing a contract because of my emotional state. Section 1550 supports me. I was not capable of signing a contract because I was deprived of my civil rights. There was menace and mistake. Some

people at Sony and elsewhere might have mistakenly believed Russo. It is hard to believe anyone, who knew her, did; she was well-known as a liar. Sony got an unfair advantage over me by lying and fraud. The consideration in the settlement did not reasonably or fairly induce me to sign it. It was very inadequate. I signed only out of fear. Sony took grossly oppressive and unfair advantage over my necessities and distress. I was afraid of becoming homeless and dying on the street. No one should have to sign a contract under that fear. PTSD can make someone have exaggerated fear. I was ready to do about anything legal to get rid of my fear and anxiety. Courts have ruled settlements signed by someone in physical pain can be challenged. Mental stress is bad and has a physical element.

Sometimes judges approve or reject a settlement. If asked, I would have said I was signing out of fears and not because I liked the offer.

State law allows individuals to be named in lawsuits about discrimination. I thought federal law allowed that if there are non-duty acts, like harassing, defaming, and lying.

I want to clear my name as allowed in Board of Regents v. Roth (1971). The government was involved, including the EEOC, the State Labor Relations Board, and the courts.

Sony fired me when I was approximately 4½ months from getting a pension. They knew

I wanted it. I was able to get it in the settlement; Sony did well there.

In state court, Sony tried to claim our two settled cases were final and adverse determinations to me. They agreed with me that the settlement was adverse to me. There were not really determinations.

I worked at Sony for one year and eight months before anyone claimed I was not performing well. For four months, Russo did not tell me the first write-up, the plan, was punishment. She may never have, but her supervisor indicated the plan was punishment. Russo never discussed anything in the plan or follow-ups when she gave them to me. She just handed them to me.

Sony claimed and the district and appeals courts ruled that my 2003 case was part of the 2004 case, i.e., they claimed 1998 thru 8/7/2002+2004=12/1/2002 thru 12/1/2003. They claimed free speech means employment discrimination, workers' comp denial, settlement challenge, and denial of recommendation. They claimed Calley+Burke+Smith=Calley+Burke, i.e. 3=2. Sony tried to say the 2003 case was re-litigation of a 2002 case. Judge Collins saw through that and said no. Judge Pregerson was tricked.

There was not a lawful object that Section 1550 requires. Sony wrongly fired me. Sony did not have my consent about the settlement; that would require me to want to and agree to void the CBA. 1568 states that consent is deemed to have been obtained in one of the

causes mentioned in 1567 only when it would not have been given had such a cause not existed. The causes in 1567 are duress, menace, fraud, undue influence, or mistake. All of those were done. I would have never given my consent if none of those had happened. Four obviously happened. Duress may not be obvious. Under 1689, I can rescind the contract. Also, because my union was a third party affected, I can rescind it. I made a mistake by signing the settlement. I did not want it. 1689 supports me. Consideration in the contract failed even if I had actually wanted the settlement because Sony changed the time for getting outplacement help. The consideration failed in a material respect. Public interest will be prejudiced by letting Sony get away with wrongfully harassing, defaming, punishing, and terminating me, violating the CBA, and forcing me to sign a new contract or face possibly or probably losing much. The public should know a big corporation cannot get away with breaking the law and retaliating when someone speaks out about it. People should not have to worry about being illegally fired.

About my letter, Sony should learn that if they stress someone, that person might fight back in ways they had not thought of. Sony had me speak with a consultant, who was a psychiatrist, to supposedly help me become a better employee. He asked me if I owned a gun. Sony did something sensible. It was utterly irresponsible that they let my supervisor harass me over and over. I have

evidence a couple of employees thought I might be the quiet type, who became violent. Sony was not concerned with the safety of employees. Sony was beyond negligent and intentionally created a hostile environment for me and a scary environment for others.

Section 1667 says it is not lawful if something is contrary to good morals. The settlement was not good morals. It was obtained by harassing, punishing, and defaming, and wrongfully terminating me. Sony finally admitted and documented Russo was a bad manager, who needed to be punished and stopped. It is not good morals for Sony to not make what happened as right as possible. The settlement says I can say I left Sony voluntarily. It is good in one way but requires me to lie. Section 1668 states all contracts, which have for their object, directly or indirectly, to exempt one from responsibility for his own fraud, or willful injury to the person or property of another, or violation of the law, whether willful or negligent, are against the policy of the law. Sony clearly violated that. I was harassed and defamed over and over. So, the settlement is illegal. 1670.5 states that a court can refuse to enforce the contract if the court finds it or part of it unconscionable. Wrongly punishing, stressing, and terminating me, and putting me in a position to consider signing were unconscionable. Putting themselves in a position to offer it was, too. 1565 requires that consent must be free and mutual. Mine was not. Instead, there was duress, menace, fraud,

undue influence, and mistake. Both sides must state in the second contract, the settlement, they mutually agree to void the first, the CBA. That did not happen. There was connivance on the part of Sony; 1689 prohibits that. They connived to harass me, fire me, break the CBA, get others to believe I was a poor performer, and get me to sign an unfair settlement.

Sony did not tell me about the changes they made to the settlement, so, I did not give informed consent, when I agreed to sign. The amount of the settlement was shockingly low: five months salary for an almost totally ruined career. I did not get anywhere near adequate compensation for lost wages. I got $3,000.00 for psychological help; that was shockingly low. They admitted I was psychologically damaged. I did not get any compensation for loss of enjoyment of life, damage to reputation, humiliation, and ridicule. I got the pension. I started at Sony in June 1998 as a temp. I did not use any sick time until January 2001. That is not someone, who wants to violate policies or procedures. I took the sick time off for stress. Sony lost productivity.

Sony did not fire me for the 2000 letter. Clearly, they retaliated in 2001 for my going to the EEOC.

Section 1570 bars threat to character. Sony had harmed my character and showed they would continue. 1575 bars "taking an unfair advantage of another's weakness of mind" and "taking a grossly oppressive and unfair advantage of another's necessities or distress."

Sony clearly violated that. I had severe anxiety disorder, depression, and PTSD. I was clearly distressed. A person without those conditions would probably be distressed. Physicians documented my conditions. Sony had that documentation or access to it. I was afraid of not being able to have food, clothing, and shelter. I was afraid of becoming homeless and dying on the street. I was at a reduced mental condition because of Sony's illegal actions. I was forced and coerced into signing the settlement. My union would not help me. I could not get an outside the union attorney because, under the law, the union was my only legal representation. I did not have competent or any counsel. I had three options: sign the settlement, do nothing, or act as my own attorney. Doing nothing would have left me with a probably ruined career and much financial difficulty. The settlement was a little better than that. I was advised by the EEOC, which Sony lied to, that if I acted as my own attorney I probably could not possibly win and would probably have to pay a lot of money to Sony and the court. I cannot find a job now. I am afraid to leave my house; I am afraid someone will try to hurt me or something will go wrong. I have agoraphobia. My negative emotions overwhelm me. Sony threatened to injure my character even if they did not directly say that. They lied about me over and over; that indicated they would continue. They lied under apparent penalty of perjury to the State Labor Relations Board.

If I could say I voluntarily left Sony, it might not be much better or might actually be worse than saying I was fired. I would likely be asked why I left Sony. It is obviously bad to say I was fired. If I said I voluntarily left or just by looking at my resume, employers would probably wonder why I could not get promoted in over three years. If I said I was fired, I could say I learned from it or try to explain I was wrongly fired. No choice is good.

In Pardi v. Kaiser (9th Cir. 2004), a settlement prevented changing it. Sony changed the CBA to mean they could punish and terminate me without cause. Sony illegally rescinded the CBA. I want to legally rescind the settlement. If I cannot, then there is no equal treatment or protection or equity, and Sony gets away with having dirty hands. In Morta v. Korea Insurance (8th Cir. 1988), a jury decided if a release was valid. I would like for a jury to decide if the law and the facts support being able to void the settlement. Section 1550 states there must be a lawful object. There was not. Sony fired, punished, defamed, harassed, and fired me, discriminated against me, and broke and voided the CBA. They conspired with my union to get my union to let them get away with it. A little after my termination, Sony agreed to give Sony union members paid time for jury duty. I had no paid time for jury duty. I was punished for going too long on jury duty. I was told Sony would not have allowed it, if I had asked Sony instead of following a judge's order.

Section 1568 says that consent is deemed obtained through duress, menace, fraud, undue influence or mistake, when consent would not been given had such cause not existed. I would not have given my consent if those things had not existed. Sony unlawfully detained my property by wrongly denying my paychecks. That is duress. Sony injured me without physical contact. They injured me mentally. They threatened to injure my character. They had injured and threatened to continue. They lied to the court and to government agencies, including under penalty of perjury. They committed fraud and threatened to continue. They proved my complaining to the EEOC and Labor Relations Board would not stop them. Things were pretty calm for me after Sony found out about my EEOC complaint that I filed in late March 2001. After I turned down a settlement offer in June 2001, they started back with false accusations. Courts have ruled that when adverse employment decisions closely follow complaints of discrimination, retaliatory intent may be inferred. That is in Bell v. Clackamus County, 341 F.3d 858, 865-66 (9th Cir. 2003) and Pardi. This also happened right before I mailed the letter to the bank in 2000. I had complained about discrimination, and my manager and others started defaming and harassing me. My supervisor's tone changed; she began claiming I was purposely not doing right. In the first write-up, she had tried to make me look incompetent and afraid to talk. Injury and threat of injury to character are

menace as in Section 1570. Threats can be implicitly.

In Pardi, intentional interference with prospective economic advantage was an issue. Sony did that. Sony interfered with my union and others. My union would not help me keep my job and not be punished. The EEOC stopped helping. My union interfered with me and Sony; the union should have made the relationship better and made Sony abide by laws. Mellon interfered with my relationship with Sony. So, there was an economic relationship between me and a third party, the defendants knew about it, there were intentional acts and inactions designed to disrupt the relationship, actual disruption of the relationship, and economic harm caused by the acts of the defendants. That is in Korea Supply Co. v. Lockheed Martin Corp., 63 P.3d 937, 950 (Cal. 2003).

Section 1572 discusses actual fraud. Sony suppressed the truth. They committed acts to deceive. They misled and lied. They knew I was not a poor performer and knew I was a very good or excellent performer. Russo and others, with Sony's approval, tried to make me look bad. Analysis of the first write-up I was given actually indicated my performance was absolutely perfect. I do not claim that, but they did, however unintentionally. They showed I made zero mistakes, kept up with my workload, followed policies and procedures, and worked well with others. In the second write-up, they discussed the letter. They claimed I made 4 mistakes. In the two

write-ups and about four follow ups to the first write up, they claimed I made six cash application mistakes and one mistake in an adjustment. I was never shown documentation about the adjustment. One claimed cash application mistake was definitely a mistake, and one definitely was not. I am not sure about the letter, the only possibly legitimate complaint. Does anybody think they could perform that well and make that few mistakes in 2¼ years, especially when you have to start going to work every day wondering what your supervisor might do and knowing your employer would do nothing or encourage her? If Sony's lawyers actually believed Sony, they made a mistake. Since, they either did not do their research or just lied, they violated their duty and Rule 11. I thought Sony's lawyers would say that my supervisor claimed I was a poor performer, but they just stated it like fact. They committed fraud and conspired.

Acceptance is discussed in Section 1585. My acceptance of the settlement was not absolute and was qualified. I did not want a settlement, both the one I thought I was going to sign and the signed one.

My union filed a grievance, which is still in effect. I signed a statement, that Sony said I had to, that asked the union to withdraw the grievance. Sony's lawyer said she would mail it to the union. The union said they never got it.

I was pressured by others to take the settlement. Sony showed they would lie in spite of the EEOC's involvement. They

disrespected the EEOC by lying and harassing me after my complaints to the EEOC. At the time I decided to sign the settlement, I had recently gotten a negative and defaming workers' comp physician's report, a defaming letter that the EEOC was dropping my case, unresponsiveness from my union about non-EEOC related issues, and hesitant and unsure responses from the Labor Relations Board. My union had said they would not help me with EEOC related issues. The mediator had harassed me and badgered me to get me to take the settlement. It made him look good to negotiate a settlement. I wanted to discuss issues at the two mediations. We mostly negotiated for me to leave. My supervisor was at one and never said a word about any issue. When I signed the settlement, I was having panic attacks and trouble sleeping. I had fear and anxiety and depression all the time. I was overwhelmed. It was due to Sony's wrongful and criminal actions. What kind of doctor would just assume the employee was a liar and irresponsible and the supervisor was right without knowing the facts? That has to be meanness and dislike or hatred toward me for some reason. She refused to look at my evidence and was disrespectful. She must have wanted me to be wrong and harmed. She is supposed to be intelligent and "do no harm."

I did nothing wrong in filing this case. I would like for Judge Pregerson's threat of possible future sanctions to be voided. I clearly stated and showed in the 2003 case that it was for events between 12/1/02 and

12/1/03 and related to two emails. My 2004 case included nothing from 12/1/02-12/1/03. The 2004 case included challenging the settlement signed on 8/7/02. My workers' comp claim was denied in a letter dated 8/7/02. I received that letter after the settlement and before my email trouble started in December 2002. The problem with the reference happened in 2004. Raymond Smith was a defendant in the 2003 case but not the 2004 case. He was involved in harassment and defamation about the emails. He was not involved before the settlement, about workers' comp, or about a reference. I just cannot get the district and appeals courts to see obvious facts.

I did not get an analysis or discussion of my claims by the appeals court that others have gotten. The district and appeals courts did not discuss my claims that state contract laws applied. That is not due process or equal treatment or protection. I did not get a fair and full attempt at litigation.

Sony's lawyers harassed me, defamed me, discriminated against me, violated my constitutional and civil rights and aided and conspired with Sony to do so. That happened in court papers and elsewhere.

Hopefully, this court will clear contract law in general and contract law involving a union CBA. I did not give informed consent because I did not have a lawyer to tell me about contract law or if I might have to pay Sony and the court a lot of money. An EEOC employee told me about probably having to

pay Sony and the courts a lot, but he was not an attorney. I think he meant well. If the EEOC were wrong, then they made a mistake that I believed. The union never told me they were my only legal representation. They never told me they would not help me about non-EEOC issues. The case I signed the settlement for was only about EEOC-related issues. It was only about discrimination in being denied promotions. So, I was indirectly told my union would not help me with that case. Sony knew my union was not helping me with the case; they took unfair advantage of my not having any legal representation. Sony influenced the union to not help me. Sony's lawyers knew or should have known the union was my only legal representation and was not helping me.

Hopefully, this court will state if I had the right to complain to the bank. I wrote the letter 11 moths before my termination. Union issues in court have a six months statute of limitations. Should punishment or termination for an issue over six months old be allowed under law? No other issue had any merit whatsoever for termination or punishment other than maybe saying be careful a couple of times. Being unsure about the letter was a big reason I signed the settlement.

If Sony's lawyers believed Sony, then they made a mistake. Sherwood v. Walker (1887) is about mistakes. Noble v. Williams was about someone being forced into a contract not intended. I was, too. I had to take the settlement, act as my own attorney and

according to the EEOC, likely lose all, or do nothing. I wanted none of those. I wanted the CBA back in effect, my job back, and a promotion. I have never filed a case without merit. I have heard no one should act in pro se. Now, I realize it should include meaning a pro se can have a terrible time getting a court to see the obvious, listen, or analyze points, or get a judge to not assume a lawyer knows the law or, unbelievably, to not assume a lawyer tells the truth. Hopefully, this court will do something to make sure pro se's get a fair attempt at litigation. I never, ever knew this problem could happen in America now.

The settlement was continued retaliation and discrimination as well as harassment and fraud.

I was of unsound mind. Section 1575 says such a person is not capable of entering a contract. I had PTSD, severe anxiety disorder, and severe depression. Those are disabilities. A person with a mental disability, especially a severe one, is not of sound mind. In Pardi, the court stated that depression was a disability.

1668 states all contracts which have for their object, directly or indirectly, to exempt any one from responsibility for his own fraud, or willful injury to the person or property of another, or violation of the law, whether willful or negligent, are against the policy of the law. Sony tried to get away with and avoid responsibility for their willful harassment and defamation, i.e. injuries to me, and for their fraud, lying and being misleading to others, while I was at Sony and

afterward. Their actions injured me psychologically, emotionally, mentally, economically, in terms of harm to reputation and ridicule, and also physically. It is unconscionable they tried to get me to sign a contract to get away with the unconscionable intent and actions to harm me for no reason and to want my manager and others to get away with harming me. There may have been constructive fraud, discussed in 1573, if Sony's lawyers believed Sony's claim that I was a poor performer. The lawyers would have had to breach their duty to believe they were telling the truth and not suborning perjury.

Sony is committing fraud by trying to uphold the settlement when they punished Russo for her bad behavior after I was terminated. My union, and the workers' comp insurance carrier and two workers' comp physicians committed fraud.

Section 1585 says acceptance must be absolute and unqualified. I did not want it. I wanted other things, like the CBA in effect, my job back, and a promotion or new job, adequate compensation, and punishment for wrongdoers.

Lawyers would probably hate to lose to a pro se. If would probably be embarrassing or humiliating, like an employer saying someone with an MBA was too incompetent to be a clerk. Judges may not like pro se's showing judges' mistakes or saying a fellow lawyer was wrong or lied.

The court should not let this case be a precedent. It is not public interest. Corrupt

lawyers, like Lake, Zapp, and Coddon will try to use it. They and others have. The public needs to and is supposed to have confidence in the courts. Courts have said that. I have heard that said about judicial immunity: judges need to feel free from lawsuits and feel unpressured to adjudicate a case properly and fairly. I have pointed to many laws and many cases that support me. Most of the time, my points are ignored in the courts' analyses. I do not see how that can be fair and due process. All litigants should feel they will get a fair chance at justice and due process and that written and case laws will be followed.

There was actual fraud, discussed in Section 1572, because Sony suggested, as a fact, things not true and that they knew were not true. They tried that over and over. If the lawyers believed a person with a 99.98% accuracy rate and who never had a problem with getting behind with his workload and who worked well with others was a poor performer, that assertion was not warranted by the information the lawyers had. They suppressed knowledge of that which is not true. They suppressed that jury duty was a problem, lied and said it was not, even though they had in their possession written notes that my supervisor said my jury duty service was too long, not approved, and she would not have approved it. Sony's lawyers sent me a copy of that in a bundle of information. Sony promised to abide by the CBA and promised not to fire me if I did not write another letter. They promised to abide by laws prohibiting

discrimination and harassment. They did not keep their promises. They deceived many people.

Section 1573 is about constructive fraud. There is constructive fault if anyone's breach of duty actions were not intended as fraud and if they gained an advantage. It is unbelievable if anyone at Sony or Sony's lawyers did not understand I was treated wrongly, but if so, then they gained an advantage by not doing their duty, like under FRCP 11, to make sure or reasonably sure they and the person they were quoting were telling the truth.

1583 states that consent is deemed fully communicated as soon as the party accepting has put his acceptance in the course of transmission to the proposer. Under extreme stress, I communicated that I would accept the proposal from February 2002, but changes had been made when I signed in August 2002. My acceptance was not absolute or unqualified. I did not have time to consider the new settlement offer, so Sony violated Section 1587. 1587 states that a proposal is revoked by failure of the acceptor to fulfill a condition precedent to acceptance. Acting legally is also a condition precedent to acceptance. Sony violated that over and over.

Wal-Mart v. Coughlin was filed against a former executive to void his retirement package. After his retirement, the executive admitted he had defrauded the company. After my termination, Sony admitted Russo was a problem. I want to void the settlement

because Sony committed fraud and other wrongs and crimes.

Whistleblowing was an issue. I mentioned to two managers that Sony apparently had money that customers' overpaid. One manager seemed to want to check it. The other manager was Russo, who had no problem doing wrong.

The Constitution states the United States Supreme Court is supposed to hear appeals, except Congress can make exceptions. Congress made all cases exceptions. There are no exceptions if all cases are called exceptions.

In O'Brien v. Sky Chefs (9th Cir. 1982), the defendant relied on subjective matter for performance reviews. Sony did that and offered no objective proof that I was a poor performer. They only offered the word of a well-known liar, who was later punished. Everything in her first write up was a lie or misleading. She showed no proof, evidence, data or logical argument to support her. In O'Brien, the court ruled refusing to rehire and giving bad recommendations after termination and after EEOC charges were filed, are sufficient to assert retaliation claims.

Veprinsky v. Fluor Daniel addresses post-employment retaliation, blacklisting, and not finding employment. I cannot find employment. I could not get a job at any movie studio or where my union was involved. I am experiencing retaliation by Sony every time I apply for a job.

In Morta, the plaintiff disavowed a release on the ground that its contents were

fraudulently misrepresented. The two sides stipulated to a trial on the validity of the release. A jury said the release was invalid. The plaintiff said there was fraud, undue influence, mistake or deceit. I made those arguments. I want a jury to decide if the settlement was invalid for any reason. I was in dire straits when I signed the settlement. I am reinjured every time I apply for a job. The money offered, 5 months salary, was shockingly low for the damage done to my earning capacity. The $3,000.00 for counseling was shockingly low for all the psychological damage done. I still need help. I am so psychologically damaged that I am afraid to leave my house. The cited case discussed there not being a mistake particularly where he is given an opportunity to have it read and explained to him by some competent and reliable person, such as an attorney. I did not have someone to explain things. My case did not get the analysis of that case. I did not get equal treatment and due process. In the Morta case, the court said if claims regarding secret intentions or reservations raise issues of fact, that must be put before a jury. I want that. Twice, I rejected settlements from Sony. I finally gave in. They kept on lying about me to anyone. We would have never gotten to the point of signing a settlement if Sony had not lied about me, starting 2½ years before we signed the settlement. Sony should not be rewarded for that or get away with other wrongs.

Sony and their lawyers took undue advantage of my lack of knowledge of the law compared to Sony's and their lawyers. Sony also had in-house counsel. The EEOC influenced me because they were experts.

The district and appeals courts discussed Title VII but not the Americans with Disabilities Act (ADA) and the Age Discrimination in Employment Act (ADEA). All were factors. I was discriminated against on the basis of sex, disability, medical condition, age and probably others. My supervisor treated most or all employees badly. She was worse about two other male employees and especially me.

Asking and getting me to sign the settlement and putting me into a situation to even consider it violated Title VII, ADA, ADEA, FEHA, state contract laws, and other laws.

I was told I did not exhaust my administrative remedies. At first, I thought that meant I did not try to work things out with Sony. Later, I realized it meant I had to file a complaint with the EEOC first.

I did not get a full and fair opportunity to litigate this case.

Basis of Jurisdiction of First Court

The United States District Court had jurisdiction because of federal questions and diversity of citizenship.

Argument for Review on a Writ of Certiorari

I did not get Fifth and Fourteenth Amendment right to due process. State law allows for challenge of a settlement obtained under the conditions discussed. Consistency in contract laws and cases is needed.

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Appendix

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED
JAN 16 2009
MOLLY C. DWYER,
CLERK
U.S. COURT OF APPEALS

GLENN HENDERSON, Plaintiff-Appellant, v. SONY PICTURES ENTERTAINMENT, INC. et al. Defendants-Appellees

No. 05-56081
DC No. CV-04-08748-DDP
California (Los Angeles)

ORDER

Before: B FLETCHER, THOMAS, and WARDLAW, Circuit Judges

The panel has voted to deny the petition for rehearing.

The full court has been advised of the petition for rehearing en banc and no judge has requested a vote on whether to rehear the matter en banc. *See* Fed. R. App. P. 35.

NOT FOR PUBLICATION
UNITED STATES COURT OF APEEALS
FOR THE NINTH CIRCUIT

FILED
AUG 01 2008
MOLLY C. DWYER,
CLERK
U.S. COURT OF APPEALS

GLENN HENDERSON, Plaintiff-Appellant, v. SONY PICTURES ENTERTAINMENT, INC. et al. Defendants-Appellees

No. 05-56081
DC No. CV-04-08748-DDP
California (Los Angeles)

MEMORANDUM*

Appeal from the United States District Court
for the Central District of California
Dean D. Pregerson, District Judge, Presiding

Submitted July 22, 2008**

Before: B FLETCHER, THOMAS, and WARDLAW, Circuit Judges

Glenn Henderson appeals pro se from the district court's order dismissing his action

*This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

**The panel unanimously finds this case suitable for decision without oral argument. See Fed. R. App. P. 34(a)(2).

alleging Title VII and state law causes of action arising from termination of his employment with defendant Sony Pictures Entertainment ("SPE") in 2001. We have jurisdiction under 28 U.S.C. Section 1291. We review de novo the district court's dismissal for failure to state a claim. *Two Rivers v. Lewis*, 174 F.3d 987, 991 (9th Cir. 1999). We review for an abuse of discretion the distinct court's dismissal of duplicative claims, *Adams v. Cal. Dep't of Health Servs.*, 487 F.3d 684, 688 (9th Cir. 2007), and the district court's decision not to exercise supplemental jurisdiction over state law claims, *Brown v. Lucky Stores, Inc.*, 246 F.3d 1182, 1187 (9th Cir. 2001). We affirm.

The district court properly dismissed with prejudice Henderson's Title VII that arose during his employment with SPE because those claims are barred by the terms of a settlement signed by Henderson and SPE in 2002 to resolve a prior action. *See Pardi v. Kaiser Found Hosps.,* 389 F.3d 840, 848 (9th Cir. 2004). Henderson failed to establish that the settlement agreement was [procured by fraud, duress, or any other reason that would render it invalid. *See Morta v. Korea Ins. Corp.,* 840F2d. 1452, 1466-57 (9th Cir. 1988) (upholding settlement agreement where record showed no legally sufficient reason to rescind it).

The district court did not abuse its discretion when it dismissed with prejudice Henderson's Title VII claims that arose after

the settlement agreement was signed because Henderson litigated those claims in an action filed in 2003 ("2003 Action"). Henderson's appeal of the 2003 Action was pending in the Ninth Circuit when the district court dismissed this case. See Adams, 487 F.3d at 688 (stating that the district court did not abuse its discretion by dismissing a duplicative action).

The court properly dismissed without prejudice Henderson's Title VII claims that are based on allegations unrelated to the 2003 Action because he had not exhausted his administrative remedies. *See Stache v. Int'l Union of Bricklayers & Allied Craftsmen, AFL-CIO*, 852 F.2d 1231, 1233 (9th Cir. 1988).

The district court properly dismissed with prejudice Henderson's Title VII claims against Mellon Bank because he failed to allege that he was a direct or indirect employee of Mellon Bank. *See* 42 U.S.C Section 2000-e2. Henderson's argument that Mellon Bank was an indirect employer, which he raises for the first time on appeal, is waived. *See Smith v. Marsh*, 194 F.3d 1045, 1052 (9th Cir. 1999).

The district court did not abuse its discretion by dismissing Henderson's state claims without prejudice. *See Herman Family Revocable Trust v. Teddy Bear*, 254 F.3d 802, 806 (9th Cir. 2001) (stating that when a district court dismisses on the merits a federal claim over which it had original jurisdiction, it may decline to exercise supplemental jurisdiction over the remaining state claims).

Henderson's remaining contentions are unpersuasive.

AFFIRMED

Filed
Clerk U.S. District Court
Jun 20 2005
Central District of California
By Deputy

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

GLENN HENDERSON, Plaintiff,

v.

SONY PICTURES ENTERTAINMENT; et al. Defendants.

Case No. CV 04-08748 DDP (SSx)

ORDER GRANTING MOTIONS TO DISMISS

[Motions filed on 4/19/05 and 4/22/05]

Entered
Clerk U.S. District Court
Jul 21 2005
Central District of California
By Deputy

THIS CONSTITUTES NOTICE OF ENTRY AS REQUIRED BY FRCP, RULE 77(d).

This matter is before the Court on the defendants' motions to dismiss the plaintiff's complaint. After reading the papers submitted by the parties, and hearing oral argument, the Court grants the defendants' motions.

I. Background

Sony Pictures Entertainment ("Sony") hired pro se plaintiff Glenn Henderson in August 1998 as a cash allocation clerk. Approximately, three years later he was fired. In June 2002, he filed his first complaint against Sony in state court, alleging age discrimination and retaliation. The parties subsequently reached a settlement agreement ("Settlement Agreement") and on August 22, 2002, Henderson moved to dismiss his complaint. On August 26, 2002, the state granted Henderson's request and dismissed the action with prejudice.

On December 1, 2003, Henderson filed a second complaint ("2003 Complaint") in state court. In addition to Sony, the complaint named Sony employees John Calley, Raymond Smith, and Mary Burke as defendants. On February 27, 2004, the defendants removed the case to federal court. The plaintiff's 2003 Complaint alleged that the defendants were liable for civil rights and First Amendment violations, "conspiracy to take away rights," discrimination, retaliation, whistle blower retaliation, harassment, fraud, defamation, insult, Freedom of Information Act ("FOIA") violations, threats, possible blackmail or extortion, breach of contract and "cover up of wrongs." (4/12/04 Order Granting Defendants' Motion to Dismiss in cases CV 04-1346 and CV 03-8782 at 2.) These claims related to the defendants' alleged activities since the settlement Agreement. (Id. at 6.)

The Honorable Judge Audrey Collins construed the plaintiff's 2003 Complaint to

assert three causes of action under federal law: (1) civil rights and the First Amendment, (2) FOIA and (3) Title VII, for employment discrimination and retaliation. The court dismissed all three federal causes of action with prejudice. The civil rights and First Amendment claims were dismissed because the defendants were private individuals, not state actors. The FOIA claim was dismissed because only agencies are proper parties to FOIA actions. The Title VII discrimination and retaliation claims (as well as claims under California Fair Employment and Housing Act ("FEHA") were dismissed because the plaintiff's allegations related to events occurring after his termination as a Sony employee: the plaintiff had failed to allege an adverse employment action. Judge Collins dismissed the pendant state law claims without prejudice.

The plaintiff's appeal of the dismissal of this 2003 Complaint is currently pending before the Ninth Circuit.

The plaintiff filed the instant complaint in federal court on October 19, 2004. The named defendants include Sony; Mary Burke and Kim Russo, employees of Sony, Paul, Hastings, Janofsky & Walker LLP ("Paul Hastings"), which represented the defendants named in the 2003 Complaint; Paul Hastings employees Amy Dow, Holly Lake, and James Zapp; Mellon Bank ("Mellon"); and a Mellon Bank employee named "Connie." More than a dozen other defendants are named in the caption of the complaint; presumably, these

are employees of Sony, Paul Hastings and Mellon.

The plaintiff alleges that he was not paid workers' compensation benefits by Sony's insurance carrier ESIS because of Sony's interference. (Compl. at 3.) He contends that he suffered discrimination, harassment, retaliation, and whistle blower retaliation while he was employed by Sony. (Id. at 3-5.) He also asserts that Sony, and its employees, have prevented him from obtaining a new job by refusing to provide him with a positive recommendation. He alleges that the defendants' unlawful conduct included breach of contract, conspiracy, fraud and defamation. (Id. at 6-8.) Further, the plaintiff seeks to have the 2002 Settlement Agreement set aside, on grounds that he entered that agreement under duress.

When the plaintiff was still employed at Sony, he allegedly wrote a letter, in his capacity as a Sony employee, to Mellon's Chief Executive Officer, complaining that an employee of Mellon, named "Connie", had mistreated him. He now contends that in retaliation, Mellon made false statements to Sony about him. He alleges that Mellon's alleged conduct led to his termination and constituted fraud, defamation, discrimination and harassment.

The plaintiff has not attached a right to sue letter from the Equal Opportunity Employment Commission ("EEOC") or the California Department of Fair Employment and Housing ("DPEH").

Sony and its employees (the "Sony group"), Paul Hastings and its employees (the "Paul Hastings group"), and Mellon have brought motions to dismiss pursuant to Federal Rule of Civil Procedure 12 (b) (6).

II. Legal Standard

Dismissal under 12 (b) (6) is appropriate when it is clear that no relief could be granted under any set of facts that could be proven consistent with the allegations set forth in the complaint. Newman v. Universal Pictures, 813 F.2d 1519, 1521-22 (9th Cir. 1987). The court must view all allegations in the complaint in the light most favorable to the non-movant and must accept all material allegations – as well as any reasonable inference to be drawn from them – as true. North Star Int'l v. Arizona Corp. Comm'n, 720F.2d 578, 581, (9th Cir. 1983). The court need not accept conclusory legal assertions as true. Benson v. Arizona State Bd. Of Dental Exam'rs, 573 F.2d 272, 275-76, (8yj Cir. 1982).

III. Discussion

The defendants contend that the plaintiff's claims are barred by the Settlement Agreement, are duplicative of the 2003 Complaint, are barred by res judicata and collateral estoppels, are barred because the plaintiff has not exhausted his administrative remedies, are pled with insufficient specificity, are outside this Court's jurisdiction, or otherwise fail to state a claim on which relief can be granted.

A. Federal Claims Against Sony and its Employees

The Court construes Henderson's allegations of discrimination, harassment, retaliation, and whistle blower retaliation as arising under Title VII of the Civil Rights Act of 1964, 42 U.S.C. 2000e-5. The plaintiff's federal allegations involve three distinct sets of claims. First, the plaintiff's allegations refer to employment-related events that occurred prior to the Settlement Agreement, when he was still an employee at Sony. Second, the plaintiff appears to reassert claims that were part of his 2003 Complaint. Finally, the plaintiff's allegations refer to events that are unrelated to, and post-date, the 2003 Complaint.

1. Claim Relating to Events That Allegedly Occurred Prior to the Settlement Agreement

The plaintiff alleges that he was the victim of discrimination, harassment, retaliation, and whistle blower retaliation while employed by Sony. (Compl. at 3-5.) Sony contends that these claims are barred by the terms of the Settlement Agreement, under which the plaintiff waived all known and unknown claims against Sony and its employees.[1]

[1] The settlement Agreement provides in pertinent part:

7. Complete Release of All Claims Known or Unknown

As a material inducement to the company to enter into this Agreement, Henderson hereby

irrevocably and unconditionally releases, acquits and forever discharges the Company and each of the Company's owners, shareholders, predecessors, successors, assigns, agents, directors, officers, employees, representatives, attorneys, divisions, subsidiaries, affiliates (and agents, directors, officers, employees, representatives and attorneys of such divisions, subsidiaries and affiliates), and all persons acting by, through, or in concert with any one of them (collectively "Releasees") and each of them, from any and all charges, grievances, complaints, claims, liabilities, obligations, promises, agreements, controversies, damages, actions, causes of action, suits, rights, demands, costs, losses, debts and expenses (including attorneys' fees and costs actually incurred), of any nature whatsoever, known or unknown ("Claim" or Claims"), which Henderson now has, owns or holds, or claims to have, own, or hold, or which Henderson at any time up to and through the date of this Agreement had, owned, or held, or claimed to have, own or hold against any of the Releasees, specifically including but not limited to any Claims under Title VII of the Civil Rights Act of 1964, the Americans with disabilities Act, the Family and Medical Leave Act, the Age Discrimination in Employment Act, the National Labor Relations Act, the California Fair Employment and Housing Act, the California Family Rights Act, the California Labor Code, or any other statute or law prohibiting discrimination in employment,

and any Claims arising in any way out of Henderson's employment with the Company or termination thereof, including but not limited to all claims based on contract, collective bargaining agreement, common law and/or statute.
(Sony's Request for Judicial Notice in Support of Motion to Dismiss, Ex. 8, Settlement Agreement at 3-4) (emphasis added).

A person who releases claims as part of a settlement agreement is barred from bringing such claims. Pardi v. Kaiser Found. Hosps., 389 F.3d 840 (9th Cir. 2004).

The plaintiff does not dispute that he released the claims against Sony and its employees, but contends that he should be permitted to reassert the claims because he signed the Settlement Agreement under "duress." (Compl. at 7.) He alleges that he was "severely depressed", had a "severe anxiety disorder," and was suffering from post traumatic stress disorder. (Id.) The plaintiff has not cited, nor has the Court own its own discovered, and legal authority suggesting that a person's fragile mental condition constitutes "duress." Rather, duress is "a threat of harm made to compel a person to do something against his or her will or judgment...." Black's Law Dictionary 542 (*the d. 2004); see also Trans-Sterling, Inc. v. Bible, 804 F.2d 525, 529 (9th Cir. 1986) (finding that a settlement agreement was not unenforceable and that there had been no duress because threat by one party to sue

another was not "wrongful" act, but negotiation tactic, and did not force another party to involuntarily enter agreement). The plaintiff has not alleged that Sony made any "wrongful" threats. Therefore, the Court finds that the plaintiff's statements do not allege actual duress. Further, the Court has not found any legal authority suggesting that the plaintiff's release of claims in the Settlement Agreement is enforceable because he was depressed, anxious, or experiencing post-traumatic stress disorder. Accordingly, the Court finds that the Settlement Agreement is not unenforceable on these grounds.

Based on the foregoing, the Court finds that the plaintiff is barred from asserting claims against Sony and its employees that were released under the Settlement Agreement. Accordingly, the Court dismisses these claims with prejudice.

2. Claims Duplicative of the 2003 Complaint

To the extent that the plaintiff is stating claims aginst Sony, John Calley, Raymond Smith, and Mary Burke for harassment, discrimination, retaliation, defamation, wrongful termination, whistle blower retaliation and fraud based on alleged events that were the subject of the 2003 Complaint, which covered the time period between the Settlement Agreement and the 2003 Complaint, these claims are barred because they are duplicative of the claims that have already been litigated and are pending before the Ninth Circuit. See Zerilli v. Evening News

Ass'n, 628 F.2d 217, 222 (D.C. Cir. 1980) (finding that a court correctly dismissed a duplicative action). Therefore, the Court dismisses these claims with prejudice.

3. Claims Based on Allegations Unrelated to the 2003 Complaint

The plaintiff alleges that Sony, Russo, Bershad, and perhaps other Sony employees, violated his rights by refusing to give him a positive reference. Specifically, the plaintiff states, "I have evidence that Linda Berdshad and Kim Russo have continued to defame me, and have sttempted to keep me from getting a good reference, and in turn, have hindered my efforts to get a job, after I left Sony." (Compl. at 6.) A former employee can bring an action under Title VII for continued retaliation after the termination of employment. See Obrien v. Sky Chefs, Inc., 670 F.2d 864. 869 (9th Cir. 1982) (claim for retaliation can be based on former employer's delivery of bad recommendations after termination), overruled on other grounds by Antio v. Wards Cove Packing Co., Inc., 810 F.2d 1477 (9th Cir. 1987); see also Pantchenko v. C.B. Dolge Co., 581 F.2d 1052, 1055 (2d Cir. 1978) (employer is liable for retaliatory refusal to provide a former employee with a letter of recommendation). Therefore, the Court construes the plaintiff's allegations regarding the continued interference with the plaintiff's employment search as a federal claim against Sony under Title VII.[2]

[2]Individuals cannot be held personally liable under Title VII. See Miller v. Maxwell's Int'l, Inc., 991 F.2d 583, 587, (9th Cir. 1993). Therefore, inasmuch as the plaintiff's Title VII claim regarding the employment reference implicates Russo and Bershad, it is dismissed with prejudice.

However, to state a claim under Title VII, the plaintiff must first file a timely charge with the EEOC asserting the claim, receive a "right-to-sue" letter from the EEOC on the claim, and file a civil complaint on the claim in federal court within ninety days of receiving the right-to-sue letter. 42 U.S.C. Section 2000e-5(b), (c), (e), (f) (1); Stache v. Int'l Union of Bricklayers, 852 F.2d 1231, 1233, (9th Cir. 1988); Nelmida v. Shelly Eurocars, Inc., 112 F.3d 380, 384, (9th Cir. 1997). The plaintiff has not alleged that he obtained a letter from the EEOC authorizing him to file suit based on the alleged refusal by Sony to provide the plaintiff with a positive employment reference. The plaintiff suggests that because he obtained a right-to-sue letter in prior actions involving some of the same defendants, he has exhausted his administrative remedies with respect to his new claims. A right-to-sue letter does not, however, authorize a party to sue a particular defendant indefinitely. Rather, a right-to-sue letter authorizes a civil action based on the allegations in administrative complaint that was actually reviewed by the EEOC> Because the plaintiff has not alleged that the EEOC

provided him with a right-to-sue letter authorizing claims of continued, post-employment harassment related to employment references, the plaintiff has not exhausted his administrative remedies with regard to these claims. Therefore, the Court dismisses these claims without prejudice.[3]

[3]The plaintiff's allegation that Sony and its employees violated an unspecified federal right by interfering with his ability to obtain workers' compensation benefits is also dismissed. Inasmuch as the plaintiff's allegation suggests that his Constitutional due process rights were violated, the claim must be dismissed with prejudice because private citizens cannot be sued for the violation of due process unless they are acting under color of state law. See 42 U.S.C. Section 1983. Inasmuch as the plaintiff's allegation is actually a discrimination, harassment, or retaliation claim under Title VII, it must be dismissed without prejudice because the plaintiff has not alleged that he exhausted his administrative remedies.

B. Federal Claims Against Mellon Bank and Its Employees

In his complaint, the plaintiff alleges that Mellon's conduct amounts to harassment and discrimination.[4] The Court construes the plaintiff's harassment and discrimination claims as actios brought pursuant to Title VII. Title VII requires that the party seeking redress bring an action against an "employer."

See 42 U.S.C Section 2000e-2; EEOC v. Pacific Maritime Ass'n, 351 F.3d 1270, 1274 (9th Cir. 2003) (liability of an indirect employer requires that employer to have some control over the direct employer and that they engage in discriminatory interference).

[4] The plaintiff's complaint alleges:
Harassment, discrimination at Mellon Bank that Helped Lead to Punishment and Termination at Sony.
I wrote to Mellon Bank about some poor service and harassment I received from one employee. I had spoken with her on the phone. Her name was Connie. I do not know her last name. I believe that was harassment and discrimination on the basis of sex, medical condition, and maybe other protected groups. (Compl. 6:9-17.)

The plaintiff does not allege that he was an employee of Mellon. Nor has he alleged that Mellon was an indirect employer with control over Sony. Accordingly, inasmuch as he has brought a Title VII claim against Mellon or its employees, it is dismissed with prejudice.

C. State Claims against Sony, Mellon, and Paul Hastings and their Employees

The plaintiff's remaining claims against all defendants arise under state law. When a district court dismisses all federal claims before trial, it is appropriate to dismiss the supplemental state claims as well. 28 U.S.C. Section 1367 © (3). Accordingly, the Court

dismisses Henderson's state law claims without prejudice.

IV. Conclusion

For the foregoing reasons, the Court grants the defendants' motions to dismiss the complaint. The plaintiff's federal claims, inasmuch as they are barred by the Settlement Agreement or duplicative of the 2003 Complaint are dismissed with prejudice. Additionally, the plaintiff's federal claims against Mellon and its employees are dismissed with prejudice. The remaining federal and state claims against all defendants are dismissed without prejudice.

IT IS SO ORDERED.

Dated: June 20, 2005

DEAN D. PREGERSON
United States District Judge

No. 08-1276

In The
Supreme Court of the United States

GLENN HENDERSON,

Petitioner,

vs.

SONY PICTURES ENTERTAINMENT INC.; PAUL, HASTINGS, JANOFSKY & WALKER LLP; HOLLY LAKE; AMY DOW; JAMES ZAPP; BETH BURKE; KIM RUSSO; MELLON BANK AND A MELLON BANK EMPLOYEE NAMED "CONNIE",

Respondents.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Ninth Circuit

BRIEF IN OPPOSITION OF RESPONDENTS SONY PICTURES ENTERTAINMENT INC., BETH BURKE AND KIM RUSSO

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I.

CORPORATE DISCLOSURE STATEMENT UNDER RULE 29.6

Respondent Sony Pictures Entertainment Inc. certifies that it is a wholly owned subsidiary of parent corporation Sony Corporation.

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II.

OPINIONS BELOW

The genesis of this instant Petition for Writ of Certiorari (the "Petition") is the July 21, 2005, Order issued by the United States District Court, Central District of California, granting the Motion to Dismiss of Respondents Sony Pictures Entertainment Inc., Beth Burke and Kim Russo (collectively, "Respondents"). The June 20, 2005, Order dismissed the Complaint filed by Petitioner Glenn Henderson ("Petitioner") on October 19, 2004 (the "2004 Complaint"). A copy of the July 21, 2005, Order is attached to Petitioner's Appendix, at pages 48-61.

On August 1, 2008, The Ninth Circuit Court of Appeals affirmed the District Court's order dismissing the 2004 Complaint. The August 1, 2008, Order affirming the District Court's July 21, 2005, Order is attached to Petitioner's Appendix, at pages 44-47. On January 16, 2009, the Ninth Circuit Court of Appeals denied Petitioner's Petition for Rehearing. The January 16, 2009, Order denying the Petition for Rehearing is attached to Petitioner's Appendix, at page 43.

On April 2, 2009, Petitioner timely filed the instant Petition for Writ of Certiorari.

III.

STATEMENT OF JURISDICTION

The District Court had federal jurisdiction over Petitioner's federal claims pursuant to 28 U.S.C.

§ 1331, and supplemental jurisdiction over Petitioner's state law claims pursuant to 28 U.S.C. § 1367.

The Ninth Circuit had jurisdiction over the Appeal pursuant to 28 U.S.C. § 1291, following the District Court's grant of Respondents' Motion to Dismiss, filed on June 20, 2005.

The United States Supreme Court has jurisdiction over this Petition for Writ of Certiorari pursuant to 28 U.S.C. § 1254.

IV.

STATEMENT OF THE CASE

The instant Petition is but one of a long line of claims and appeals filed by Petitioner against Petitioner's former employer, Respondent Sony Pictures Entertainment Inc. ("SPE") and SPE's agents and employees. Since 2002, Petitioner has filed seven separate and unsuccessful complaints in California state and federal court against SPE and/or its agents and employees, and has appealed each and every ruling issued against him. Indeed, Petitioner was declared a vexatious litigant by the Los Angeles Superior Court on September 19, 2005, and by the federal District Court on February 11, 2009. (Exhibits in Support of Brief in Opposition of Respondents ("RE"), pp. 48, 110.) Pursuant to those Orders, Petitioner is prohibited from pursuing any further litigation against Respondents regarding his employment with SPE without a prior court order.

Petitioner commenced his legal barrage against SPE in June 2002, when, within eight months of his termination, Petitioner filed identical complaints against SPE in state and federal court, alleging claims for age discrimination and retaliation (collectively, the "2002 Complaint"). In or about August 2002, SPE and Petitioner executed their Settlement Agreement, pursuant to which Petitioner released all known and unknown claims against SPE and its agents, and dismissed the 2002 Complaint with prejudice.

Several months after execution of the Settlement Agreement, Petitioner commenced contacting SPE's Chief Executive Officer, John Calley, claiming that SPE had engaged in unspecific financial improprieties, and seeking to reassert claims Petitioner previously made in the 2002 Complaint. Petitioner was referred to SPE's Executive Director of Investigative Services, Raymond Smith ("Smith"), regarding Petitioner's claims of impropriety. Smith invited Petitioner to meet with him to discuss Petitioner's claims, but Petitioner refused to meet with Smith.

Instead, Petitioner, in 2003, again filed suit in federal and state court (collectively, the "2003 Complaint"), alleging numerous and unmeritorious federal and state law claims against SPE, Smith, Calley, and Mary Burke ("Burke") (collectively, the "SPE Defendants"), SPE's then Vice President of Labor Relations. The state court action was removed to federal court and consolidated with Petitioner's federal suit.

The SPE Defendants moved to dismiss the 2003 Complaint pursuant to Rule 12(b)(6) of the *Federal Rules of Civil Procedure*, on the ground that the 2003 Complaint failed to state a cause of action against the SPE Defendants. On April 13, 2004, the District Court granted the motion to dismiss, and dismissed *with prejudice* all of Petitioner's federal and state employment claims. Petitioner appealed this decision to the Ninth Circuit, which affirmed the District Court's ruling in *Henderson v. Sony Pictures Entertainment Inc.*, 135 Fed. Appx. 934, 935 (9th Cir. 2005).

Before the Ninth Circuit affirmed the District Court's ruling regarding the 2003 Complaint, on October 19, 2004, Petitioner filed yet another complaint in federal court against SPE (the "2004 Complaint"). The 2004 Complaint is the subject of Petitioner's current Petition for Writ of Certiorari. In addition to SPE, Petitioner has named as defendants: Beth Burke and Kim Russo (SPE employees) (collectively, "Respondents"); SPE attorneys Paul, Hastings, Janofsky & Walker LLP, Amy Dow, Holly Lake and James Zapp; Mellon Bank and a purported employee of Mellon Bank.

Petitioner's 2004 Complaint presented a litany of muddled allegations and complaints regarding Petitioner's employment with SPE and pled claims for relief that were dismissed with prejudice by the District Court in connection with the 2003 Complaint. As a result, Respondents filed a Rule 12(b)(6) motion to dismiss, which the District Court, Honorable Dean D. Pregerson presiding, granted.

In considering the motion to dismiss, the District Court divided Petitioner's claims in his 2004 Complaint as follows: (1) federal claims[1] that arose prior to the execution of the Settlement Agreement; (2) federal claims duplicative of federal claims made in the 2003 Complaint; (3) federal claims based upon allegations unrelated to the 2003 Complaint; and (4) state law claims. With respect to these four categories of claims, the District Court, on June 20, 2005, held as follows:

(a) All federal claims related to events that occurred prior to Petitioner's and SPE's 2002 settlement were barred pursuant to the terms of the Settlement Agreement.

(b) All federal claims duplicative of the 2003 Complaint were dismissed with prejudice.

(c) Federal claims unrelated to events alleged in the 2003 Complaint were dismissed without prejudice because Petitioner failed to exhaust his administrative remedies.

(d) All remaining state law claims were dismissed without prejudice because all federal claims had been dismissed.

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[1] The District Court construed the allegations in the 2004 Complaint of discrimination, harassment, retaliation, and whistle-blower retaliation as arising under Title VII of the Civil Rights Act of 1964. (Petitioner's Appendix ("PA"), p. 48.)

Petitioner appealed Judge Pregerson's ruling to the Ninth Circuit. On August 1, 2008, the Ninth Circuit affirmed in full the District Court's June 20, 2005, Order. (PA, pp. 44-47.) Petitioner thereafter petitioned the Ninth Circuit for rehearing, which was summarily denied on January 16, 2009. (PA, p. 43.) The instant Petition for Writ of Certiorari was timely filed by Petitioner on April 8, 2009.

Like all of Petitioner's previous claims against SPE, the instant Petition fails to raise any important constitutional questions, fails to raise issues that require a novel interpretation of federal statutes, and does not assert the existence of a conflict among decisions of the state or circuit courts regarding an important constitutional question. Without such a showing, the Petition does not present a suitable case for this Court to grant certiorari. *See*, Rule 10 *United States Supreme Court Rules* (Supreme Court's primary role is to decide important constitutional questions, interpret federal statutes, maintain harmony among the decisions of the Circuit Courts of Appeals and with state court interpretations of federal questions); *Bunting v. Mellen,* 541 U.S. 1019, 1021 (2004) (certiorari denied based on absence of conflict among circuits on constitutionality of supper prayer at state military college).

Although Petitioner apparently argues that certiorari should be granted because his case purportedly raises constitutional issues and/or requires the interpretations of federal statutes, the mere presence of these issues is not enough to grant certiorari.

As this Court has stated, "[i]t is not the habit of the court to decide questions of a constitutional nature unless absolutely necessary to a decision of the case." *Clinton v. Jones*, 520 U.S. 681, 690, fn. 11 (1997). Petitioner has failed to present any facts and/or arguments that even remotely come close to showing that this Court's decision of the purported constitutional and/or federal issues is required.

Petitioner essentially argues that the Ninth Circuit and the District Court improperly decided that the facts of this case warrant dismissal of Petitioner's 2004 Complaint. However, this Court will not grant certiorari simply to correct a perceived error in a lower court decision; achieving justice in a particular case "is ordinarily not a sufficient reason" for granting certiorari. *Ticor Title Ins. Co. v. Brown*, 511 U.S. 117, 122 (1994). Indeed, because the Ninth Circuit's and District Court's decision is based upon facts specific to this case, and is not dependent upon a novel interpretation of a federal statute or constitutional law, certiorari is not an appropriate remedy in this case.

Petitioner makes no new legal arguments why his Petition should be granted, but simply restates his old complaints about the Settlement Agreement and his perceived mistreatment at the hands of Respondents. What is clear is that Petitioner does not have legal grounds for the relief requested herein. Petitioner is unhappy with the Ninth Circuit's and the District Court's rulings, but this does not change the fact that the Ninth Circuit and the District

Court's rulings are legally sound and that no basis exists to grant certiorari herein.

Finally, and quite importantly, Petitioner has had a full and fair opportunity to address his legal grievances against Respondents. Indeed, Petitioner received a more than fair settlement from SPE. Unless Petitioner can show that Respondents have committed new and unrelated wrongs, Petitioner is now prohibited from repeatedly dragging Respondents into court to answer for events long ago settled and dismissed.

For all the reasons stated herein, Respondents respectfully request that this Court deny the instant Petition for Writ of Certiorari.

V.

STATEMENT OF FACTS

On August 31, 1998, Petitioner was hired as a cash allocation clerk by Columbia Pictures Television, Inc., the predecessor-in-interest to SPE. As noted by Petitioner, the terms and conditions of his employment with SPE were governed by a collective bargaining agreement. Also as noted by Petitioner, in or about February 2000, Petitioner executed a Development Plan drafted by SPE, which outlined the steps Petitioner needed to take to improve his performance and prepare Petitioner for future opportunities with SPE. (Petition, p. 13.) On or about December 18, 2000, Petitioner received a written disciplinary

warning advising him that his performance was below SPE's expectations. In accordance therewith, SPE terminated Petitioner on October 18, 2001.

Thereafter, on June 24, 2002, Petitioner filed a complaint against SPE in state court. (RE, p. 1.) On August 5, 2002, Petitioner also filed, but never served, a virtually identical action against SPE in federal court. The June 24, 2002 state court complaint and the August 5, 2002 federal court complaint shall hereinafter be collectively referred to as the "2002 Complaint." In the 2002 Complaint, Petitioner alleged claims for age discrimination and retaliation in violation of the Fair Employment and Housing Act ("FEHA").

Soon after the 2002 Complaint was filed, SPE and Petitioner executed a Settlement Agreement wherein all Petitioner's claims, known and unknown were released and waived. On August 22, 2002, Petitioner caused to be dismissed with prejudice the 2002 Complaint (state and federal cases). (RE, p. 14.)

In or around November 2002, and within three months of entering into the Settlement Agreement, Petitioner contacted John Calley ("Calley"), SPE's then Chief Executive Officer, requesting a meeting. Petitioner purportedly wanted to discuss his termination and Petitioner's belief that employees of SPE were keeping money that did not belong to SPE. Calley referred the matter to Raymond Smith ("Smith"), SPE's then Executive Director of Investigative Services, who contacted Petitioner to investigate

Petitioner's claims. Petitioner did not follow up with Smith, and did not provide any details regarding Petitioner's allegations. SPE did conduct an investigation, and found no improprieties.

A little over a year later, on December 1, 2003, Petitioner filed another complaint against SPE in state court. (RE, p. 24.) The next day, December 2, 2003, Petitioner filed, but did not serve, a federal action containing virtually identical allegations as the state court action against SPE. (RE, p. 30.) The 2003 state and federal complaints shall be collectively referred to as the "2003 Complaint."

The 2003 Complaint named SPE and individual defendants Calley, Smith, and Mary Burke, SPE's Vice President of Labor Relations in 16 different claims for relief. The 16 claims for relief included: civil rights violations; First Amendment violations; discrimination; retaliation; whistle-blower retaliation; conspiracy to take away rights; fraud; harassment; defamation; "insult;" "possible" blackmail or extortion; breach of contract; and "cover up of wrongs." (RE, pp. 26, 30.)

The state court action was removed to federal court, where it was consolidated with the federal action. Pursuant to the defendants' motion to dismiss brought under Rule 12(b)(6) of the *Federal Rules of Civil Procedure*, the District Court dismissed with prejudice all of Petitioner's federal claims and state court claims under FEHA. The Ninth Circuit Court of Appeals affirmed the District Court's ruling in full.

Henderson v. Sony Pictures Entertainment Inc., 135 Fed. Appx. 934, 935 (9th Cir. 2005).

With the 2003 Complaint still pending before the Ninth Circuit, Petitioner struck again and filed another complaint in District Court against Respondents herein, Mellon Bank and other individuals. (RE, p. 36.) The federal action was filed on October 21, 2004 (the "2004 Complaint") and contained much the same facts, claims and causes of action as those alleged in the 2002 and 2003 Complaints.

The 2004 Complaint, like the instant Petition, was difficult to interpret, but purported to state claims for, among other things: discrimination; harassment; fraud; defamation; whistle-blower retaliation; wrongful termination; conspiracy; whistle-blower termination; duress; breach of contract; failure to give a good reference; unfair practices in denying workers' compensation benefits; and intentional infliction of emotional distress. (RE, p. 36.)

Respondents moved under Rule 12(b)(6) to dismiss the 2004 Complaint. Construing Respondents' 12(b)(6) motion, the District Court placed Petitioner's claims in four different categories, based on the nature of the factual allegations stated by Petitioner: (1) federal claims relating to the Settlement Agreement; (2) federal claims that were duplicative of the 2003 Complaint; (3) federal claims based upon allegations unrelated to the 2003 Complaint; and (4) all remaining pendent state law claims. On June 20, 2005, the District Court, Honorable Dean D.

Pregerson presiding, granted the motion to dismiss. (PA, pp. 48-61.)

The District Court dismissed the first category of claims because they were barred by the terms of the Settlement Agreement. The second category of claims were also dismissed, with prejudice, as those claims were duplicative of the claims of the 2003 Complaint, which had been litigated and decided. The District Court dismissed the third category of claims (those alleged in the 2004 Complaint) without prejudice, as Petitioner failed to first exhaust his administrative remedies. Finally, after dismissing all of Petitioner's federal claims, the District Court properly exercised its discretion under 28 U.S.C. § 1367(c)(3) and dismissed Petitioner's state law claims as well.

Undeterred, and while the 2003 and 2004 Complaints were pending, Petitioner filed yet another complaint against Respondents herein, among others. In his May 3, 2005 complaint (the "2005 Complaint"), Petitioner yet again alleged the same claims, including, but not limited to, harassment; defamation; "threat and harassment about a First Amendment issue;" denial of workers' compensation benefits; lack of promotion opportunity; failure to give a good reference; breach of contract; whistle-blower retaliation; fraud; conspiracy, etc.

In response thereto, Respondents herein filed a demurrer and motion to determine Petitioner a vexatious litigant. On September 19, 2005, the state court granted Respondents' motion determining

Petitioner to be a vexatious litigant, and required Petitioner to provide security to proceed with the 2005 Complaint. After Petitioner failed to post the security, the state court dismissed Petitioner's 2005 Complaint against Respondents herein. (RE, p. 48.)

Undaunted, on November 27, 2007, Petitioner again filed a complaint in federal court asserting various civil and criminal claims against Respondents (the "2007 Complaint"). The 2007 Complaint was amended in 2008. (RE, p. 52.) Petitioner alleged, among other things, claims for RICO violations; Collective Bargaining Agreement violations; stalking; extortion; discrimination; torture; threats, etc.

Respondents filed a motion seeking to dismiss with prejudice the 2007 Complaint, and for an order determining Petitioner to be a vexatious litigant. On February 11, 2009, the District Court, Honorable Otis D. Wright II presiding, granted Respondents' motion, dismissed the 2007 Complaint and determined Petitioner to be a vexatious litigant. (RE, p. 110.)

VI.

REASONS FOR DENYING THE WRIT

A. Petitioner's Federal Claims Were Improper As A Matter Of Law And The Ninth Circuit Properly Affirmed The District Court's Ruling.

The instant Petition must be denied as the decisions below were correct as a matter of law, and were based upon the specific facts of this case.

The District Court liberally construed the allegations contained in the 2004 Complaint of discrimination, harassment, retaliation, and whistle-blower retaliation as arising under Title VII of the Civil Rights Act of 1964, and labeled these claims Petitioner's federal claims. (PA, p. 53.) The Ninth Circuit agreed with the District Court's interpretation of the allegations contained in the 2004 Complaint. (PA, p. 45.)

As interpreted by the District Court, Petitioner alleged three categories of federal claims for relief against Respondents: (1) federal claims that accrued pre-Settlement Agreement and which were related to Petitioner's employment with SPE (PA, pp. 53-56); (2) federal claims duplicative of the federal claims made in the 2003 Complaint (PA, pp. 56-57); and (3) Petitioner's federal claim of retaliation, which was based upon events that occurred after the events alleged in the 2003 Complaint[2] (PA, pp. 57-59.) The Ninth Circuit properly affirmed the District Court's dismissal of each of these categories of claims.

1. Petitioner's Pre-Settlement Federal Claims Are Barred Because All Known And Unknown Claims Were Waived By Petitioner's 2002 Release.

In affirming the District Court's dismissal of all pre-Settlement Agreement federal claims, the Ninth

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[2] Petitioner's 2004 Complaint claimed that SPE allegedly continued to interfere with Petitioner's employment search by refusing to give Petitioner a positive reference. (PA, p. 57.)

Circuit recognized the long held rule that a party who releases claims as part of a settlement is barred from relitigating such claims. *Pardi v. Kaiser Found. Hosp.*, 389 F.3d 840, 848 (9th Cir. 2004); *see also, Sec. People, Inc. v. Medeco Sec. Locks, Inc.*, 59 F.Supp.2d 1040, 1041-1042 (N.D. Cal. 1999) (where settlement agreement between the parties included language that plaintiff released all claims against defendant which were, or could have been, alleged in the first case, subsequent claims that could have been alleged in the first case were barred); *Winet v. Price,* 4 Cal.App.4th 1159, 1166-1168 (1992) (general release in which parties declared their intention to release each other from all claims, known or unknown, suspected or unsuspected, arising from either facts described in underlying lawsuit or any act or omission in connection with legal services that attorney rendered to former client, and reinforcing such release by specifically referring to and waiving benefits of provisions of California *Civil Code* § 1542, could not be avoided based on client releasor's alleged subjective intention not to release attorney from all possible future claims).

Here, it cannot be disputed that Petitioner released all known and unknown federal claims, as defined by the District Court, asserted in the 2004 Complaint by way of paragraph 7 of the Settlement Agreement. Paragraph 7 of the Settlement Agreement states, in pertinent part:

> 7. Complete Release of All Claims Known or Unknown. As a material inducement to

the [SPE] to enter into this Agreement, [Petitioner] hereby irrevocably and unconditionally releases, acquits and forever discharges [SPE] and each of [SPE's] owners, shareholders, predecessors, successors, assigns, agents, directors, officers, employees, representatives, attorneys, divisions, subsidiaries, affiliated (and agents, directors, officers, employees, representatives and attorneys of such divisions, subsidiaries and affiliates), and all persons acting by, though, or in concert with any of them (collectively "Releasees") and each of them, from any and all charges, grievances, complaints, claims, liabilities, obligations, promises, agreements, controversies, damages, actions, causes of action, suits, rights, demands, costs, losses, debts, expenses (including attorneys' fees and costs actually incurred), of any nature whatsoever, known or unknown ("Claim" or "Claims"), which [Petitioner] now has, owns or holds, or claims to have, own or hold, or which [Petitioner] at any time up to and through the date of this Agreement had, owned, or held, or claimed to have, own or hold against any of the Releasees, specifically including but not limited to any Claims under Title VII of the Civil Rights Act of 1964, the Americans with Disabilities Act, the Family and Medical Leave Act, the Age Discrimination in Employment Act, the National Labor Relations Act, the California Fair Employment and Housing Act, the California Family Rights Act, the California Labor Code, or any other statute or law

> prohibiting discrimination in employment, and any Claims arising in any way out of [Petitioner's] employment with [SPE] or termination thereof, including but not limited to all claims based on contract, collective bargaining agreement, common law and/or statute.

(PA, pp. 53-55.)

Petitioner recognizes that none of the federal claims that he alleges in his 2004 Complaint arose before and/or through the date of the Settlement Agreement survived this release. Rather, although unclear, it appears that Petitioner claims that the Settlement Agreement should be void because Petitioner signed it under "duress." Petitioner claims that he was "severely depressed," had a "severe anxiety disorder" and/or "post traumatic stress disorder," thereby making him unable to assent to the terms of the Settlement Agreement. (Petition, p. 20.)

However, neither Petitioner's depression nor his anxiety constitutes "duress." A claim for duress must be based on a wrongful act that was sufficiently coercive to cause a reasonably prudent person faced with no reasonable alternative to succumb to pressure. *Rich & Whillock, Inc. v. Ashton Dev., Inc.*, 157 Cal.App.3d 1154, 1158 (1984).

Nowhere in the instant Petition, nor in any of Petitioners' numerous previously filed briefs, does Petitioner state, plead or argue that Respondents engaged in any wrongful act to coerce him to execute

the Settlement Agreement. Petitioner relies solely on his allegations of depression and anxiety. (Petition, p. 20.) Petitioner did not refer to any legal authorities in any of the proceedings below supporting the position that his release of all claims in the Settlement Agreement is unenforceable due to Petitioner's depression, anxiety or alleged post traumatic stress disorder. Nor could Petitioner do so, as no such authority exists.

Indeed, the governing authorities are to the contrary. *Johnson v. Int'l Bus. Mach. Corp.,* 891 F.Supp. 522, 531 (N.D. Cal. 1995) (a "mere weakness of spirit" caused by dismay at losing one's job or frustration in believing one has been discriminated against is not legally sufficient for the rescission of a settlement agreement). As noted by the Ninth Circuit, Petitioner failed to raise any facts that the Settlement Agreement was procured by fraud, duress, or any other reason that would render it invalid. *See Morta v. Korea Insurance Corp.,* 840 F.2d 1452, 1466-1467 (9th Cir. 1988) (upholding settlement agreement where record showed no legally sufficient reason to rescind the agreement). (Appendix, p. 45.) Thus, the Ninth Circuit and the District Court properly held that Petitioner's release of all claims in the Settlement Agreement is enforceable and that all of Petitioner's pre-Settlement Agreement claims fail as a matter of law. There is no basis for granting the instant Petition with respect to the first category of claims dismissed by the District Court and affirmed by the Ninth Circuit.

2. Petitioner's Federal Claims Were Properly Dismissed As Duplicative Of The 2003 Complaint.

The District Court properly held, and the Ninth Circuit properly affirmed, that, to the extent Petitioner's federal claims were based upon alleged events addressed in the 2003 Complaint (which covered the time period between the Settlement Agreement and the 2003 Complaint), these claims are barred as duplicative of claims already finally decided and dismissed *with prejudice* by this Court. When the 2004 Complaint was filed, the 2003 Complaint was still pending on appeal. Fearing that the Ninth Circuit would affirm the District Court's decision, which it eventually did, Petitioner tried to circumvent the process by filing a duplicative pleading in the District Court. *See Henderson v. Sony Pictures Entertainment Inc.*, 135 Fed. Appx. at 935 (affirming the District Court's dismissal of the 2003 Complaint).

A litigant has no right to maintain two actions on the same issues in the same or different court against the same defendants at the same time. *See Zerilli v. Evening News Ass'n*, 628 F.2d 217, 222 (D.C. Cir. 1980); *Ridge Gold Standard Liquors, Inc. v. Joseph E. Seagram & Sons, Inc.*, 572 F.Supp. 1210, 1213 (N.D. Ill. 1983) (a federal suit may be dismissed "for reasons of wise judicial administration . . . whenever it is duplicative of a parallel action already pending in another . . . court.").

Indeed, District Courts are accorded a "great deal of latitude and discretion" in determining whether one action is duplicative of another. Generally, a suit is duplicative if the "claims parties, and available relief do not significantly differ between the two actions." *Serlin v. Arthur Andersen & Co.*, 3 F.3d 221, 223 (7th Cir. 1993). Courts faced with duplicative pleadings do not abuse their discretion by dismissing the duplicative pleading. *Zerilli*, 628 F.2d at 222; *Walton v. Eaton Corp.*, 563 F.2d 66, 70 (3d Cir. 1977).

In the 2003 Complaint, Petitioner pled claims for: civil rights violations; First Amendment violations; "conspiracy to take away rights;" discrimination; retaliation; whistle-blower retaliation; harassment; fraud; defamation; "insult;" Freedom of Information Act violations; threats; "possible" blackmail or extortion; breach of contract; and "cover up of wrongs." (PA, p. 49.) In his 2004 Complaint, Petitioner pled claims for: discrimination; harassment; retaliation; whistle-blower retaliation; breach of contract; fraud; defamation; unfair business practices in denying workers' compensation benefits; "failure to give a good reference" and conspiracy. (PA, p. 51.)

Throughout the 2004 Complaint, Petitioner asserted the same grievances about the same employment-related issues Petitioner litigated in the 2002 Complaint *and* the 2003 Complaint. Petitioner's allegations center around his termination, Respondents' purported employment retaliation, harassment and discrimination, and concerns regarding jury duty while he was employed at SPE.

To the extent that Petitioner was trying to circumvent the process, avoid the eventual ruling by the Ninth Circuit, and plead duplicative claims, he was not permitted to do so. Thus, the Ninth Circuit held that the District Court did not abuse its discretion when it dismissed Petitioner's duplicative claims. (PA, pp. 45-46.) *See also, Adams v. Cal. Dept. of Health Servs.*, 487 F.3d 684, 688 (9th Cir. 2007) (District Court did not abuse its discretion by dismissing a duplicative action).

The legal precedent relied upon by the Ninth Circuit has not changed, and certiorari should not be granted herein.

3. Petitioner's Federal Claim That Accrued After His 2003 Complaint Was Properly Dismissed Because Petitioner Failed To Exhaust His Administrative Remedies.

The District Court construed the allegations of the 2004 Complaint wherein Respondents purportedly interfered with Petitioner's employment prospects by failing to give him a positive recommendation (after the 2003 Complaint) as an attempt to state a Title VII claim. (PA, p. 57.)

The District Court further held, and the Ninth Circuit affirmed, that Petitioner's purported Title VII claim failed as a matter of law because Petitioner failed to exhaust his administrative remedies. (PA, pp. 58-59.) The filing of an administrative charge is a

jurisdictional prerequisite to bringing a civil action under Title VII. *United Air Lines, Inc. v. Evans,* 431 U.S. 553, 558 (1977) ("A discriminatory act which is not made the basis for a timely charge is . . . merely an unfortunate event in history which has no present legal consequences."); *Martin v. Lockheed Missiles & Space Co.,* 29 Cal.App.4th 1718, 1724 (1994).

A charge of discrimination must be filed with the Equal Employment Opportunity Commission ("EEOC") *within 180 days* of the claimed discriminatory act in order to be actionable. *See* 42 U.S.C. § 2000e-5.

Petitioner does not now, nor did he in his 2004 Complaint, allege that he exhausted his administrative remedies as to any of the Respondents with respect to any of the claims made therein. (PA, p. 51.) The Ninth Circuit, therefore, properly affirmed the District Court's ruling, stating that Petitioner's failure to exhaust his administrative remedies warranted dismissal of the post-2003 Complaint federal claim made by Petitioner. (PA, p. 46.) *Stache v. Int'l Union of Bricklayers & Allied Craftsmen, AFL-CIO,* 852 F.2d 1231, 1233 (9th Cir. 1988). Certiorari should not be granted.

B. The Doctrines Of Res Judicata And Collateral Estoppel Also Bar Petitioner's Claims.

The Ninth Circuit's affirmance of the District Court's dismissal of the 2004 Complaint finds support under the doctrines of res judicata and collateral

estoppel, as the 2004 Complaint is simply an attempt to relitigate the issues that were either raised, or should have been raised, in the 2002 and/or 2003 Complaints. A final judgment was entered as to Petitioner's federal claims and state law employment claims in the 2003 Complaint; accordingly, the 2004 Complaint is barred by the doctrines of res judicata (claim preclusion) and collateral estoppel (issue preclusion).

Under the doctrine of res judicata, a valid, final judgment on the merits precludes parties or parties in privity with them from relitigating the same "cause of action" in a subsequent suit. *Mycogen Corp. v. Monsanto Co.,* 28 Cal.4th 888, 896 (2002); *Slater v. Blackwood,* 15 Cal.3d 791, 795 (1975). Res judicata provides that a judgment, if rendered on its merits, is an absolute bar to a subsequent action, not only as to every matter which was presented in the first action, but as to any other matter that might have been asserted. *L.A. Unified Sch. Dist. v. L.A. Branch NAACP,* 714 F.2d 935, 940 (9th Cir. 1983); *see also Owens v. Kaiser Found. Health Plan, Inc.,* 244 F.3d 708, 713 (9th Cir. 2001) ("Res Judicata, also known as claim preclusion, bars litigation in a subsequent action of any claims that were raised or could have been raised in the prior action."); *Littlejohn v. U.S.,* 321 F.3d 915, 919-20 (9th Cir. 2003) (claim preclusion "prevents the relitigation of claims previously tried and decided").

In determining whether or not two claims are the same for purposes of res judicata, this court

considers: whether rights or interests established in the prior judgment would be destroyed or impaired by the prosecution of the second action; whether substantially the same evidence is presented in the two actions; whether the two suits involve infringement of the same right; and whether the two suits arise out of the same transactional nucleus of facts. *Int'l Union of Operating Eng'rs-Employers Const. Indus. Pension, Welfare & Training Trust Funds v. Karr,* 994 F.2d 1426, 1429 (9th Cir. 1993), *citing, Costantini v. Trans World Airlines,* 681 F.2d 1199, 1201-02 (9th Cir. 1982). The last of these criteria is the most important, and this court has applied claim preclusion without even reaching the other factors listed above. *Int'l Union of Operating Eng'rs,* 994 F.2d at 1430.

Collateral estoppel, or issue preclusion, precludes relitigation of issues argued and decided in prior proceedings. *Mycogen,* 28 Cal.4th at 896. Like res judicata, the doctrine applies if the decision in the initial proceeding was final and on the merits. *Le Parc Cmty. Ass'n v. Workers' Comp. Appeals Bd.,* 110 Cal.App.4th 1161, 1171 (2003). The principles of collateral estoppel mandate that a former judgment "is conclusive on issues actually litigated between the parties in the former action." *Interinsurance Exch. of the Auto. Club v. Superior Court,* 209 Cal.App.3d 177, 181 (1989) (citations omitted).

California courts broadly interpret what constitutes an issue for purposes of collateral estoppel. For example, in determining what constitutes an "issue" subject to collateral estoppel, the court of appeal in

Interinsurance Exchange held barred any matter that was *actually raised* or related and/or relevant to the scope of the action so that it *could have been raised. Id.* at 182, *citing, Sutphin v. Speik,* 15 Cal.2d 195, 202 (1940). Thus, the court in *Interinsurance Exchange* barred subsequent legal theories based on the same factual background:

> We conclude that as a result of the final adjudication of the issue of the effectiveness of [plaintiff]'s assent to the release based on a factual background in which [plaintiff] could have urged theories of fraud and overreaching as bases for vitiating her assent, [plaintiff] is precluded from asserting her cause of action for breach of the covenant of good faith and fair dealing based on the same factual background. The finally adjudicated effective assent under these circumstances of factual background identity and opportunity to assert fraud and overreaching forecloses a "bad faith" action.

Interinsurance Exchange, 209 Cal.App.3d at 183 (sustaining defendant's demurrer without leave to amend and dismissing the action).

Under the federal rule, "a final judgment maintains its preclusive effect despite pendency of an appeal." *Home Diagnostics Inc. v. LifeScan Inc.,* 120 F.Supp.2d 864, 867 n.1 (N.D. Cal. 2000), *citing*, *Pharmacia & Upjohn Co. v. Mylan Pharms., Inc.,* 170 F.3d 1373, 1381 (Fed. Cir. 1999); *Huron Holding Corp. v. Lincoln Mine Operating Co.,* 312 U.S. 183, 188-89

(1941) (under the federal rule, the pendency of an appeal does not suspend the operation of an otherwise final judgment for purposes of res judicata or collateral estoppel).

With the exception of Petitioner's allegations against SPE's outside counsel, and his purported Title VII claim that accrued after the 2003 Complaint, Appellant's entire 2004 Complaint arises out of the same transactional nucleus of facts – Petitioner's employment and his communications with SPE subsequent to his employment. A final judgment, by way of dismissal of Petitioner's 2002 Complaint and 2003 Complaint, has been entered as to these claims. Thus, Petitioner has already litigated, or has had the opportunity to litigate, the majority of the claims at issue in the 2004 Complaint:

- Harassment – Actually litigated in the 2002 and 2003 Complaints;
- Discrimination – Actually litigated in the 2002 and 2003 Complaints;
- Retaliation – Actually litigated in the 2002 and 2003 Complaints;
- Fraud – Actually litigated in the 2002 and 2003 Complaints;
- Defamation – Actually litigated in the 2002 and 2003 Complaints;
- Breach of Contract – Actually litigated in the 2002 and 2003 Complaints;

- Conspiracy – Actually litigated in the 2002 and 2003 Complaints;
- Issues related to settlement of the 2002 Complaint – Could have been litigated in either the 2003 or 2004 Complaint;
- Denial of workers' compensation benefits – Could have been litigated in either the 2003 or 2004 Complaint.

While the District Court did not exercise its discretion to grant Respondents' motion to dismiss on these grounds, this Court may consider the doctrines of res judicata and collateral estoppel in deciding to affirm the District Court's dismissal of the 2004 Complaint, and the Ninth Circuit's affirmance of that decision.

C. The District Court Properly Exercised Its Discretion To Dismiss Petitioner's Remaining State Law Claims.

A District Court has the discretion to exercise supplemental jurisdiction over state law claims that arise out of the same facts and circumstances as the federal claims. 28 U.S.C. § 1367(c)(3). When a District Court has disposed of all federal claims well before trial, the District Court may exercise its discretion to dismiss pendent state law claims without prejudice. *Id.* This is precisely what the District Court did here. Since the District Court properly acted within its discretion, its order dismissing the remaining state law claims without prejudice was affirmed by the

Ninth Circuit. (PA, p. 46.) *See Herman Family Revocable Trust v. Teddy Bear,* 254 F.3d 802, 806 (9th Cir. 2001) (after a District Court dismisses on the merits federal claims over which it had original jurisdiction, the District Court may decline to exercise supplemental jurisdiction over remaining state claims); 28 U.S.C. § 1367(c)(3). Accordingly, certiorari should not be granted to revisit the District Court's dismissal of Petitioner's state law claims.

VII.

CONCLUSION

For the foregoing reasons, Respondents Sony Pictures Entertainment Inc., Beth Burke and Kim Russo respectfully request that this Court deny Petitioner Glenn Henderson's Petition for Writ of Certiorari.

Respectfully submitted,

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Sony Pictures Entertainment Inc.,
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Dated: May 22, 2009

130 (3)

Docket No: 08-1276

United States Supreme Court

Glenn Henderson
Plaintiff

v.

Sony Pictures Entertainment, et al.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth District

Petition for Writ of Certiorari

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Reply to IV. Statement of the Case

I have not filed seven unsuccessful complaints against Sony. Only the last case was dismissed on the merits, even though I clearly proved the law supported me. They have been unsuccessful every other time to get a case dismissed on the supposed merits. Two of those cases were dismissed because of a settlement. The respondents are saying the settlement was not good for me. I agree. That is the main reason for this case. The settlement was not adequate compensation and was obtained by fraud, lying, and other wrongs. I discussed this in my petition and earlier court papers. There would have been only four cases if I had realized I could file one case for both federal and state claims. I filed three cases in federal court that were similar or partly similar to three in state court in 2002, 2003, and 2004/2005. In the 2003 cases, I emailed to ask the CEO if I could speak to him about my termination and to say Sony evidently had money that customers' had overpaid. I sent a second email to say I wanted to be able to document what was said between Sony investigator, Raymond Smith, and me. I tried to fax file the 2005 state case in 2004 but was told I had the wrong courthouse. It was the 2005 case, where the corrupt lawyers for Sony, got a corrupt and incompetent judge, Hilberman, to declare me a vexatious litigant, even though I had not violated the unconstitutional law. The case was dismissed because I did not pay security. I had to have had five adverse and final

determinations in seven years or had to have repeatedly re-filed a case already determined. I had never re-filed such a case and only had three cases adversely and finally determined. One was about the statute of limitations in a case with my union. I proved it had not expired. Two cases were dismissed with prejudice because I listed a federal agency instead of the United States government. Also, I had to do administrative remedy. I still had time to do the remedy and did. Those two cases should have been dismissed without prejudice. One was transferred from state court just after dismissal of a similar federal case and so was dismissed. I appealed the 2005 state case all the way to this court. Corrupt judges refused to hear my case.

A 2005 federal case with Sony was dismissed because I needed to go to the EEOC first and because the court did not want to exercise jurisdiction over a state issue. I went to the EEOC and got a right-to-sue letter. The federal issue was Sony prevented me from getting a reference. I tried to get my name off the vexatious litigant list in another state case. It was dismissed because I did not pay security.

I did not file "identical" cases in 2002 in state and federal court. The federal case included discrimination and harassment by Sony and my supervisor, discrimination in promotions, and wrongful termination. The state case was only about discrimination in promotions.

In my email to the CEO, I specified what I thought was the problem: Sony evidently had money that customers had overpaid. It is absolutely false that I refused to meet with Smith. I said I would on the phone and also in an email, which I produced. Smith lied. Sony's lawyers have violated their Rule 11 duties and made claims that had been proven false. I could not prove that I agreed on the phone. That is exactly why I emailed the CEO that I wanted to be able to document what was said. I told Smith what reports to run. I do not know why my help was needed.

The respondents claim that my 2003 complaints were unmeritorious. That is not true and violates Rule 11. I was harassed about the two emails that were free speech. Sony tricked a federal judge into believing retaliation by a former employer was not covered by Title VII. I believe Section 1983 applied because I had gone to the Los Angeles District Attorney's office for help. They allowed Sony to harass me. A state person was involved. Also, Sony's in-house lawyer was an agent of state court. The Ninth Circuit evidently did not know Title VII could prevent retaliation by a former employer or did not care. I tried to appeal to this court but was denied a chance to file because I was late. That was because the appeals court was late in notifying me of its ruling.

This current case from 2004 is not "a litany of muddled allegations." It is an absolute lie that I "pled claims for relief that were dismissed with prejudice by the District Court

in connection with the 2003 Complaint." Sony tricked the judge into believing that. Attorneys Rosen and Carrasco again violated Rule 11 and acted in bad faith. The judge dismissed claims against Smith, even though he was not listed in the 2004 case. He was listed in the 2003 case. On page 27 of the respondents' Appendix, line 10 shows I was talking about issues during the previous year. I signed that complaint on 12/1/03; please see page 35 of the Appendix. So, the issues happened between 12/1/02 and 12/1/03. Relating to Sony, the 2004 complaint was about challenging the settlement of 2002, workers' compensation denial in August 2002, and preventing me for getting a reference in 2004. None of those issues was in the 2003 complaint. They do not claim the three individuals in the 2003 case were in the 2004 case.

It is untrue that all my claims do not raise any important constitutional questions. I have not been getting due process or equal protection. Now I am not getting the right to petition. My cases have not been given the same treatment as other cases. Courts have allowed Sony's lawyers and Sony to lie or let others lie over and over again. The courts are showing lack of integrity. People should be able to rely on the courts. This court should help. It is untrue that I have not "remotely come close to showing that this Court's decision" is "required."

Referring to page 8, the Ninth Circuit did not base its decision "upon the facts specific to

this case." I discussed untrue facts previously. It is very "novel interpretation of a federal statute or constitutional law" to say claims against someone, who is not a defendant, can be dismissed and to say claims from different events and different time periods are the same claims. It is absolutely untrue that I do not have "legal grounds for the relief requested." I have clearly shown that over and over. The courts rulings were not "legally sound." I have shown that over and over. Basis exists to grant certiorari. It is misleading to say I "perceived mistreatment at the hands of Respondents." I showed it as fact.

On page 8, the respondents claim I have "had a full and fair opportunity to address" my "legal grievances against Respondents." They say "quite importantly," I had the opportunity. They show they understand and agree that is quite important. I agree, too. I have not had a full or fair opportunity to address and have the courts address my grievances. That is what I have been saying over and over. Being allowed to address or state grievances means little if the courts do not address and discuss those grievances, points, and questions. I am not getting my points addressed or my questions answered. I have referred to California contract laws that clearly support my claims, but the courts are not discussing or addressing them. I want a "full and fair opportunity." That is a huge point.

I did not receive "a more than fair settlement." I got 5 months salary. I got $3,000.00 for psychological help and a small

union pension that I was 4 months or so from getting when I was fired. I give them credit about the pension. Five months salary was nowhere near compensation for a damaged career and reputation and loss of a lot of salary. I cannot find a job now. $3,000.00 is not nearly enough to get the help I need. I am so damaged now that I am afraid to leave my house. My experience with Sony, the courts, and others has shown me I have no way to protect or take care of myself.

V. Statement of Facts

They claim I was put on a Development Plan, which outlined steps I needed to take to improve my performance and prepare for future opportunities. It was not that at all. It was all lies or misleading or a couple of things I had not been asked to do. I went over this in the petition. Rosen, Carrasco, Sony, and Russo have lied over and over and acted in bad faith. I was put on the plan even though I had an absolutely perfect record of applying checks. I made zero mistakes. I never got behind. I worked well with others. My manager, Russo, did not claim anything different, yet, she claimed I needed to come up with more ideas to streamline my job and needed to take a time management class. I have gone over the plan in the petition and other papers. The Written Warning included a letter I wrote to a bank CEO about harassment. That is the only issue at Sony that might be a problem. I have discussed the warning in the petition and other papers. My performance was excellent.

In the warning, Russo claimed I made four application mistakes. The whole time I was there, she claimed I made six mistakes out of 34,000 checks. I definitely applied one wrong and temporarily put a partial amount on a wrong invoice I thought the amount should go to, while I waited for clarification. I applied one of the six totally right. Russo said I applied the other three to wrong invoices, but I followed procedures. She said I did an adjustment wrong but never showed proof. The last incident was that Russo said I went on jury duty for too long. Sony has denied this, but they have a copy of her notes that proved it. They committed perjury to the CA Labor Relations Board.

They claim the two 2002 complaints in state and federal courts were virtually identical. They were not, as I discussed.

Page 10 has the lie that I did not follow up with Smith. I told him what reports to run. I did not give details of company names or amounts. If he found nothing wrong, he did an incompetent job.

On page 12, they make the absolutely untrue and bad faith claim in violation of Rule 11 that my 2004 complaint "contained much the same facts, claims, and causes of action as those alleged in the 2002 and 2003 Complaints." I asked to void the settlement of the 2002 claims and have those claims litigated, and that was the only similarity. I have proven no 2003 claims were in the 2004 case, this current case. It is untrue this case was difficult to interpret, in the sense of

understanding it. I tried to file the 2005 state complaint about the same time I filed the 2004 federal complaint. On page 14, it is untrue, inaccurate, or misleading to say corrupt and incompetent Hilberman determined I was a vexatious litigant. One cannot really determine something is true that is not true.

The 2007 case was mostly about being wrongly put on the unconstitutional state vexatious litigant list. I do not see how Wright could determine I was a vexatious litigant when I was not. I clearly proved my case.

I will fight the corrupt Hilberman, Wright, Sony, their lawyers, Russo, and others until I get justice or until I die.

VI. Reasons for Denying the Writ

1.Release

As I have discussed in other places and papers, the federal claims were proper and not improper as a matter of law. The Ninth Circuit improperly affirmed the district court's ruling.

On page 18, their claim that it is "unclear" but "appears" I claimed the settlement should be void because it was signed under duress is not true. I was clearly saying that. I could have picked a better and more general word than duress, like stress or distress. I cleared that up and pointed to how several state contract laws clearly supported me. Sony's lies and fraud were clearly wrongful acts that were "sufficiently coercive to cause a reasonably prudent person faced with no reasonable alternative to succumb to

pressure." The respondents say that must happen. Also, taking advantage of a person's mental condition is illegal. That happened. I have discussed that more in other places.

Page 19 and the top of page 20 are full of lies and untruths. No sentence is true. This court should stop Rosen and Carrasco.

On page 19, they claim I did not plead or argue the respondents engaged in any wrongful act to coerce me to execute the settlement. That is an outrageous lie. I stated over and over how they lied to me and others and committed fraud and threatened to lie and get money from me. I went over and over how state contract law supported me. It is an absolute lie that I relied solely on allegations of depression and anxiety, even though that is enough. They do not mention post-traumatic stress. I have clearly shown the settlement is unenforceable. Law says the contract is not valid. I have clearly shown that. It is an absolute lie that no authority exists to support the settlement is not enforceable. I have clearly shown that.

Their cited authorities are not "contrary" to my arguments. *Johnson v. IBM* does not apply. Contrary to their and the Ninth Circuit's claim that I raised no facts to show the settlement was procured by fraud, duress, or any other reason that would render it invalid, I did raise those kinds of facts and clearly and absolutely proved my case. I raised issues about lies, fraud, and conspiracy to conspire with and influence others. I did not list all the state contract laws in my original

complaint, but I discussed them in oral argument, in appeal papers, and in my petition to this court. I could have amended my complaint. It is not true that the settlement is enforceable. I have clearly shown that. There is basis to grant the petition.

2. 2003 Complaint

It is a blatant lie that claims in my 2003 complaint are in my 2004 complaint. Rosen and Carraasco need to be fined, sanctioned, disbarred, and sent to prison. I have clearly pointed to different events and times. The respondents are making an absolute mockery of the courts, and the courts are willing to let them. The respondents lie that I was trying to circumvent the appeals court's affirming dismissal of the 2003 case by filing the 2004 case. The 2003 and 2004 cases were completely different, so I could not have. The 2003 was about free speech in emails. That is not in the 2004 case.

They make the absurd claim they knew what I was thinking: that I was "(f)earing that the Ninth Circuit would affirm." They seem to be trying to trick the courts into believing the duplicative idea because I used some of the same words, like fraud and defamation, in both cases. Unbelievably, they have been getting away with it. The effect on my 2004 case was that no relief was denied by the claim of duplicity because I had not asked for relief about any 2003 claim. The problem is

the respondents use the issue to try to claim wrongdoing by me.

On page 24, they claim I did not allege that I had exhausted my administrative duties. I alleged it. I got a right-to-sue letter from the EEOC.

B. Res Judicata and Collateral Estoppel

It is misleading and a lie that my 2004 case is "simply an attempt to relitigate the issues that were either raised, or should have been raised, in the 2002 and/or 2003 Complaints." The similarity was I tried to challenge the settlement, and then and only then, actually litigate issues from 2002. In the 2003 complaint, Judge Collins said issues in the 2002 complaint had not actually been litigated. It is bad faith and at best misleading to say I tried to relitigate 2002 issues without saying I was trying to challenge the settlement. It is untrue and absurd to claim that the dismissal of the 2003 complaint bars the 2004 complaint. Even if 2003 issues were in the 2004 complaint, not all issues in the 2004 complaint would be barred by dismissal of the 2003 complaint.

They state res judicata precludes bringing a case decided on the merits. The two 2002 cases were not decided on the merits, so res judicata does not apply. Similarly, collateral estoppel does not apply.

I did not try to re-file claims in the 2004 case during appeal of the 2003 case. At the bottom of page 27, they start the nonsense that with two exceptions, the 2004 case arises

out of the same transitional nucleus of facts in the 2003 and 2002 cases. I have discussed that. Also, there is nothing in the 2002 case about challenging a settlement. There could not be, because the settlement had not been signed.

On page 28, they list seven issues and claim all were actually litigated in the 2002 and 2003 cases. None were actually litigated in the 2002 case. Only discrimination and retaliation were actually litigated in the 2003 case. That judge made mistakes.

On page 29, they state the settlement challenge or workers' compensation could have been litigated in 2003 or 2004. I tried in 2004.

Conclusion

I hope the petition will be granted.

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(4)

Docket No: 08-1276

United States Supreme Court

Glenn Henderson
Plaintiff

v.

Sony Pictures Entertainment, et al.
Defendants

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth District

Petition for Rehearing

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Grounds for Rehearing

Evidence shows I must have been too afraid to fight in court when and I signed the settlement. I have been showing since then that I will fight in court. I signed the settlement out of fear because Sony kept lying and violated the court rule to tell the truth and committed perjury to the CA Labor Relations Board. Sony got others to believe their undocumented lies and utter nonsense and got others to conspire with them. Some others added untrue and defaming statements to what Sony said. My union representative, Christine Page of Local 174, defamed me and stated I was a poor performer and said I blamed others for my mistakes. Sony never claimed I blamed others for my mistakes. A workers' compensation doctor said I took little or no responsibility for the consequences of my actions. Sony never claimed that. The doctor had no idea what happened. I stated my supervisor lied, misled, and wrote me up for things she had not asked me to do. Sony and my supervisor, defendant Russo, offered absolutely no proof or evidence or argument or witness to contradict what I said. I offered some documented proof of what I said. I had witnesses to back up some of what I said. I offered reasonable and logical arguments. Sony sided with Russo, even though she was a well-known liar, who was later written up for being a bad manager, and even though she offered no proof or documentation to contradict me. The EEOC said I would likely lose a lot of money to Sony and the courts, and

then they defamed me. I was first written up at Sony, even though I had done my job duties excellently. Russo did not claim I made a mistake in cash application. So, evidently I had done my job duty of cash application perfectly, absolutely perfectly. At worst, I had done every single thing excellently. I signed the settlement while trying to deal with post-traumatic stress disorder, anxiety disorder, and depression.

I have been falsely accused of being inconsistent in my job performance. Usual usage means that was a claim I was a poor performer. I never was and was never close. I was probably actually inconsistent. I went back and forth from perfect to excellent. In their brief, Rosen and Carrasco falsely claimed my allegations were muddled.

The settlement said I could say I left Sony voluntarily. That would require me to lie, which is not ethical. I was fired on October 18, 2001. I signed the settlement in August 2002. I had been having to say I was fired for almost ten months. I had been to several accounting employment agencies and applied with a lot of employers.

Usually, a contract is about starting a relationship. It is usually about starting with nothing between the parties and not about wanting a new contract to break an old one. Sony wanted a new contract to get away with breaking an old one. The old one is still in effect because both sides did not agree to replace it. I did not agree. Sony replaced the CBA with the settlement.

When, I filed the state case that led to the settlement, I did not have a right-to-sue letter from the EEOC. The case was about discrimination in promotions. I thought a letter the EEOC had given me when I first went to them was a right-to-sue letter and that I had one year to file a case, but I was mistaken. So, I actually did not have the right to bring the case yet, and it should have been dismissed without prejudice.

I have other evidence and arguments I wanted to offer at trial. I feel I need to back up my claims in court papers. I feel like I am having to show my trial strategy in violation of due process. Sony attorneys Rosen and Carrasco defamed me about my job performance. I wanted to respond.

In their Opposition Brief, they wrongfully claimed I filed seven unsuccessful cases. Two were settled. One was transferred and combined. Three were partly dismissed without prejudice. One required me to put up security, which I did not do, and it was not dismissed on the merits. They failed to get any of those cases dismissed on the merits. None of my cases were unsuccessful. Before, they have complained that I re-filed claims that were dismissed without prejudice and added new claims. I added new claims because they did new wrongs. I have the right to re-file claims that were dismissed without prejudice.

In spite of law school and whatever experience, Rosen and Carrasco together evidently could not figure out that their Opposition Brief should be in booklet form.

Yet, they have tried in two courts to defame me and say I did not follow rules and disobeyed rules. I believe they probably did not intentionally violate the rules. I thought their mistake was pretty sad for lawyers. I actually felt sad. It looks like they got some outside help because an outside company served me. I do not think a separate appendix they had was put in booklet form; I was never served a copy of the appendix in booklet form. I am fine with their being able to re-file the Opposition Brief. I have been allowed to re-file to get my booklets acceptable.

Sony's lawyers are implicitly saying they believe the courts will ignore my rights, the laws, and the Constitution. They are implicitly saying the courts are incompetent and/or corrupt. Lawyers have complained about the number of defendants I have named. Many people have done wrong and so are defendants. Several people at Sony did wrong. It started with my manager. Some other managers and some other employees joined in. Sony got outside people to join in. Sony and others got lawyers, like Rosen and Carrasco, to join in. Lawyers got judges and justices to join in. I have done no wrong in listing so many defendants. I have done good. They should be stopped. It is a question of have they done wrong and not of how many defendants are there. I can understand if someone wonders did that many people do wrong. The answer is yes, and I have documented evidence that they all did.

Judges and justices have been legislating from the bench, and this court has allowed it. This court has allowed lying and perjury and reasons for disbarment, sanctions, and jail or prison.

The court should let me know if I had the right to complain to Mellon Bank about harassment from a bank employee. I have to re-file against Mellon because of the wrong ruling I should have filed Mellon claims in state court.

The district court said I did not allege actual duress. I meant mental stress when I said duress. I had heard of innocent people, who were arrested, admitting to wrongs they did not commit because they were under duress. I thought duress meant stress. I think sometimes or often, an explicit threat was not made to those arrested persons.

This court should point out the mistakes judges and justices made. The judges and justices should admit it. That would give the public more confidence in the courts and judicial system, if the public knew about it. It certainly would for me. The mistakes have allowed corrupt lawyers like Rosen and Carrasco and Sony's other lawyers to use those mistakes in more illegal and corrupt ways. These lawyers' claims that I was a poor performer at work and that I abused the judicial system are crimes and are contempt of this court and other courts. These lawyers and their clients should be punished accordingly, i.e. they should be severely punished, including given jail or prison time. This court

is aiding and abetting these criminal people by allowing them to get away with their behavior.

Kimes v. Stone (9th Cir. 1971) gives me the right to bring claims about statements made in court papers in spite of CA Civil Code 43 that gives immunity, if constitutional rights or civil rights were involved, like in this case. So, the lawyers and other defendants in this case do not have that immunity. I see that Rosen and Carrasco are only defending two Sony employees. I wondered if other defendants, who were Sony employees, are no longer at Sony. If so, I wonder why they left Sony.

I have a case that was dismissed in federal court this year. I will attempt to appeal that. I wonder if any members of this court realize you are defendants. I wonder if any of you remotely care. If the appeal does not work, the only thing I know to do is to try to put the members of this court, Rose, Carrasco, Lake, Zapp, Russo, and others under citizen's arrest. I probably would not try before November 2010. I am not sure where to start. I will keep trying the courts, although that seems futile. As long as I have a breath of life left in me, I will fight this case and fight other wrongs that happened in courts until I get justice. If you want to stop me, you will have to kill me. The members of this court and others are out of your minds if you think I am going to stand by while you allow supposed claims against a person not listed as a defendant to be dismissed and to allow the claim to stand that I made duplicative claims, when I clearly

showed the events and times were different. I ask this court for help in getting justice and in getting me psychological help. The stress, anxiety, fear, humiliation, and anger are causing me a lot of problems. Stress can kill. The illegal wrongs of this court, the lawyers and defendants in this case, and other courts and other people are attempted murder and probably will be murder when I die, because I imagine stress will be a or the factor, unless a bullet is the factor. I am extremely afraid of fighting and extremely afraid of not fighting.

I am not getting a fair and complete chance at litigation. I am not getting all my points addressed. I have not gotten all the laws and cases, that I referred to, addressed. I am not getting due process. I have been told that if I do not respond to a point, I am conceding the point. It should work the other way around when courts and lawyers do not respond to my points.

This court is making the statement that it is not important for everyone to get justice. I imagine many people feel that way because this court gets to decide what cases to hear. That violates the Constitution. Congress is allowed to only make exceptions about appeals this court must hear and not exclude every case.

Everyone should get a fair chance at justice, including those representing themselves. In Zatko v. California (1991), this court's majority opinion stated that the dissent said the court appeared to ignore its duty to provide equal access to justice for both

the rich and poor. The opinion said the message the majority hoped was the opposite and they allowed a lot of frivolous cases to be filed but wanted to stop repeated totally frivolous demands on the Court's limited resources. Justice Stevens and ex-Justice Blackmun dissented. I do not see how I am getting equal access that the Court seems to agree or used to agree everyone should get. I am sure a lot of people feel the same way about their cases. Justice Stevens, with Justice Blackmun joining in dissent, stated by branding petitioners in the case under Rule 39.8, "the Court increases the chances that their future petitions, which may very well contain a colorable claim, will not be evaluated with the attention they deserve." Justice Stevens seems to be able to easily understand the problem with being labeled a vexatious litigant, when the law does not apply to all and so is unconstitutional, and when the pro se litigant has not even violated the law. That has happened to me. Similarly, this court should be able to realize being a pro se can be a similarly bad label. A judge or justice would probably easily believe a lawyer would know more than a pro se, a person outside the law profession. I worry I will be banned from this Court. I am very, very worried about my cases not getting the attention they deserve in this court, district court, federal appeals court, and state courts because a corrupt and incompetent CA judge, Joe Hilberman, labeled me a vexatious litigant even though I had not violated an

unconstitutional law. Other corrupt and incompetent judges and justices in CA Superior Court, CA appeals court, the CA Supreme Court, and this United States Supreme Court agreed and/or let it stand. Now, a corrupt and incompetent federal judge, Otis Wright, wrongly declared me the same thing this year in federal court. This Court denied my petition in the case Hilberman decided. This Court denied me equal access to justice in direct and clear opposition to the Court's claims in Zatko. Zatko has a footnote in the dissent that refers to Demus, 500 U.S. (1991) and in Demus, Justice Marshall, joined by Justice Blackmun and Justice Stevens, states "And with each barrier that it places in the way of indigent litigants,...the Court can only reinforce in the hearts and minds of our society's less fortunate members the unsettling message that their pleas are not welcome here." I am getting that message reinforced by this Court, and I am getting the same kind of message in federal district and appeals courts and in CA Superior, appeals, and Supreme courts.

I hope this Court will grant the petition for rehearing and rule that my points should be addressed by this Court or the Ninth Circuit or the district court.

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Certification

I certify that the petition is presented in good faith and not for delay. The grounds are limited to circumstances of a substantial or controlling effect or to other substantial grounds not previously presented.